



**Corruption, Human Rights and
Gender Perspectives:**
Human Rights Approach to Fight Corruption

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There is an increasing awareness within the international community that endemic corruption has severe negative consequences on human rights, as it perpetuates discrimination, inequality and reinforces gender inequalities. Corruption diverts developing funds into private pockets, impairing the ability of governments to realise basic human rights such as the right to education and health, having implications for releasing economic, social and cultural rights. It also violates political and civil rights, undermining the rule of law and fair justice, which causes discrimination in favour of the powerful against the vulnerable, poor and marginalised women, thereby leading to injustice, inequality and unfairness. Hence, disables a State from meeting its obligations to respect, protect and fulfil its citizen's human rights.

This thesis examines the impact of corruption on human rights with special consideration on regarding gender. The aim of the thesis is to determine whether human rights are sufficiently protected under the current anti-corruption framework and to demonstrate the value added of integrating human rights to it, precisely focusing on the impact of corruption on the human rights of vulnerable groups that are exposed to particular risk of being victims of corruption, including poor and disadvantaged women. Further the thesis aims to examine how acts of corruption violate specific human rights and find out if corruption impacts women and men differently in these areas. The thesis also aims to evaluate if human rights principles and approaches should make anti-corruption efforts more gender sensitive. Finally the thesis will make a proposal for reforms and analyse the effectiveness and challenges of integrating human rights to the anti-corruption framework.

Spilling, mannréttindi og kynbundin sýn: Aðkoma mannréttinda við að berjast á móti spillingu

Alþjóðlegur skilningur hefur aukist á því að viðvarandi spilling hefur vægðarlausar neikvæðar afleiðingar á mannréttindi þar sem spilling viðheldur aðgreiningu, ójafnrétti og eflir kynja ójöfnuð. Fé sem ætlað er til þróunaraðstoðar endar á tíðum í einkaneyslu fárra og veikir þannig möguleika ríkisstjórna til að koma í framkvæmd grundvallar mannréttindum svo sem rétti til menntunar og heilbrigðisþjónustu sem aftur hefur þær afleiðingar að erfitt er að koma í framkvæmd efnahagslegum, þjóðfélagslegum og menningarlegum réttindum. Spilling fótum treður einnig pólitísk og borgaraleg réttindi, grefur undan leikreglum laganna og réttlátum dómum, sem orsakar mismunun í þágu hinna valdameiri á kostnað þeirra varnarlausu, fátæku og jaðarhópi kvenna, á þann hátt að leiðir til ranglætis, mismununar og ósanngirni. Afleiðingin er að ríki verða ófær um að framfylgja skuldbindingum sínum til þess að virða, vernda og uppfylla mannréttindakröfur meðal þegna sinna.

Ritgerðin skoðar áhrif spillingar á mannréttindi með sérstöku tilliti til kynja misvægis. Takmarkið er að komast að því hvort mannréttindi hafi nægan hlífiskjöld í núverandi andspillingar lagaramma og að sýna fram á mikilvægi þess að samstillta löggjöfina með því að auka veg mannréttindaþáttarins einkum með því að beina sjónum að áhrifum spillingar á mannréttindi varnarvana hópa sem eru berskjaldaðir fyrir sérstökum áhrifaþáttum að meðtöldum fátækum og illa stöddum konum. Ennfremur er leitast við í ritgerðinni að skoða hvernig spillingarverknaður fótum treður tiltekin mannréttindi og leiða fram hvort spilling hefur mismunandi áhrif á konur og karla í viðkomandi kringumstæðum til þess að vega og meta hvort grunnreglur mannréttinda og nálgun ætti að gera andspillingar viðleitni næmari gagnvart kynjamismun. Að lokum mun ritgerðin setja fram tillögur að endurbótum ásamt því að greina árangur og áskorun þess að samþætta mannréttindarákvæði við andspillingar lögskipunina.

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ACRONYMS

AU	African Union
AU Convention	The African Union Convention on Preventing and Combating
CECHR	Council of Europe Commissioner for Human Rights
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CESCR	The Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
CoE Civil	Council of Europe Civil Law Convention on Corruption
CoE Criminal	Council of Europe Criminal Law Convention on Corruption
CPI	Corruption Perceptions Index
CSO	Civil Society Organisation
ECOSOC	United Nations Social and Economic Council
Guidelines OECD	Guidelines for Multinational Enterprises
HRC	Human Rights Council
IACC	International Anti-Corruption Convention
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
IMF	International Monetary Fund
NGO	Non-governmental organisation
OAS	Convention Inter-American Convention against Corruption
OECD	Organization for Economic Co-operation and Development
OECD Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
OHCHR	Office of the High Commissioner for Human Rights
	The Bank World Bank
TI	Transparency International
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDOC	United Nations Office on Drugs and Crime
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization

UNODCCP

United Nations Office for Drug Control and Crime Prevention

WHO

World Health Organization

1 INTRODUCTION

Corruption is a complicated issue that has been present for hundreds of years in various forms in societies worldwide. It came into the world's attention in the 1990's addressed as an obstacle of economic growth and development.¹ The focus on the causes and effects of corruption has mainly been the actions of public officials abusing their wealth and power and the negative effects corruption has on the economic growth and political stability. This has largely left out of the corruption agenda the effects that it has on human rights and further it explains why most anti-corruption initiatives are gender neutral. It is only recently that there has been a growing consensus that endemic corruption has severe negative consequences on human rights, as it perpetuates discrimination and equality, reinforces gender inequalities, and worsens the plight of the vulnerable and poor. Corruption disproportionately impacts poor, marginalized women and other vulnerable groups, due to their powerlessness and lack of resources to participate in corrupt activities and by doing so it attacks the fundamental values of equality of people, their human rights and human dignity. Corruption may violate human rights in numerous ways e.g. preventing people from fulfilling their economic, social, cultural, political, and cultural rights, such as, depriving disadvantaged women from essential healthcare services, and hindering their way to education and fair justice. It has been demonstrated that:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.²

Corruption, being a universal problem, has for the last decade been addressed internationally with coordinated efforts to discuss the causes, effects and possible international solutions to the problem. Series of international agreements and global frameworks for combating corruption have begun to emerge. Many states have signed international anti-corruption agreements and implemented them by

¹ Ackerman, Susan Rose, *Corruption and Government: Causes Consequences and Reforms*, Cambridge University Press 1999, p. 181-185.

² Annan, Kofi United Nations Secretary General, Statement on the Adoption by the General Assembly of the UNCAC, 31st October 2003.

introducing law reforms and regulations.³ Governments and international organizations and institutions have examined administrative procedures to determine where the risk of corruption is hidden and what consequences it may involve. These studies have shown, first, that corruption exists in all countries, both developed and developing, in the public and private sector, as well in civil society. Second, that regardless of the scope of the corruption, such acts have a substantial impact on the development and prosperity of civil society, exacerbates poverty, and consequently it can make a chain of violations against human rights.⁴ Despite that, international anti-corruption treaties and initiatives rarely refer to human rights and major human rights treaties and instruments rarely mention corruption.⁵

The United Nation Convention against Corruption (UNCAC)⁶ is the most recently adopted anti-corruption convention and the only global initiative, reflecting the emerging international consensus, providing a framework for putting an end to corruption. The UNCAC embodies a comprehensive approach to corruption, recognising the importance of preventive and punitive measures, providing a mandate for the participation of civil society in accountability processes.⁷ Regardless, it does not seem to be able to protect those needing it the most and to be responsive to the needs and aspirations of the people, including vulnerable, poor, women and other marginalized groups. In an area of concern where progress is very much driven by law enforcement it is imperative to ensure that human rights and human dignity are not lost out of sight. Connecting acts of corruption with human rights might create new possibilities for actions, whereas human rights are of universal moral and legal importance. To find out if there is a need for reforming the anti-corruption framework to protect human rights it is also important to evaluate what other institutions and organisations are doing to maintain the corrupt regime. As institutions and organisations initiatives often guide and regulate the actions of the State,⁸ and can press them to focus on the misfortunate.

³ Abboud, A. and Targonski, R. "Transforming the Culture of Corruption", *eJournal USA, Issues of Democracy* Vol. 11, No. 12, 2006, p. 1.

⁴ Transparency International. Available at: <http://www.transparency.org/>, 7th December 2010.

⁵ ICHRP and TI, "Corruption and Human Rights: Making the Connection", February 2009, p. 3. Available at: http://www.ichrp.org/files/reports/40/131_web.pdf, 5th November 2010.

⁶ United Nations Convention on Corruption, Adopted by the General Assembly by resolution 58/4 of 31st October 2003, entered into force on 14th December 2005.

⁷ UNDOC, "Convention highlights". Available at: <http://www.unodc.org/unodc/en/treaties/CAC/index.html>, 9th December 2010.

⁸ Ackerman, *Corruption and Government: Causes, Consequences and Reforms*.

Very little empirical research has been on the impact of corruption on human rights, with consideration on gender equality to see whether women are disproportionately affected of corruption. Women are often differently affected by corruption, particularly when it comes to service delivery such as health and education. Their gender roles as care givers and due to their reproductive period makes them primary users of public services and more vulnerable for lack of accountability. Also, as women often lack resources to pay bribes, instead compensation may take the form of sexual favours, which has negative impact on often already existing gender gaps in many countries.⁹ Especially in the developing countries, where gender inequality is already high, the effects can be severe.

This thesis collectively examines the definition, international status and relevance of the concept of corruption law, initiatives and policies around the world, and the extent which a human rights lens could be a helpful way in which to view the corruption issues as to release the human rights and dignity of victims of corruption.

More specifically the thesis will examine the impact of corruption on human rights, with special consideration on gender. The aim of the thesis is to determine whether human rights are sufficiently protected under the current anti-corruption framework and to demonstrate the value added of integrating human rights to it, precisely focusing on the impact of corruption on the human rights of vulnerable and poor, that are exposed to particular risk, including poor and marginalized women. Further the thesis aims to examine how acts of corruption violate specific human rights and find out if corruption impacts women and men differently in these areas evaluating if human rights principles and approaches could make anti-corruption efforts more gender sensitive. Finally the thesis will make a proposal for reforms on the UNCAC and analyse the effectiveness and challenges of integrating human rights to the anti-corruption framework.

The goal is not to find solutions to curb corruption immediately, but to take one step towards limiting corruption and reducing the harm it causes. The thesis discusses how integrating human rights to the anti-corruption framework might improve the framework in the overall efficiency, fairness, legitimacy of the State, and for victims of corruption to have their human rights and dignity acknowledged.

⁹ TI, “Corruption and Gender in Service Delivery: The Unequal Impacts“, *Working Paper 02/2010*, p. 2. Available at: http://www.transparency.org/publications/publications/working_papers/wp_02_2010_corruption_and_gender, 20th September 2010.

2 CORRUPTION: CONCEPT, INTERNATIONAL ISSUES AND THE LINK TO HUMAN RIGHTS

2.1 Definition of Corruption

In order to understand the proposed reforms in this thesis there is a need to determine the phenomenon corruption. Corruption occurs in all sectors of the community and covers a wide range of human behaviour hence corruption is a concept that needs to be addressed in an interdisciplinary manner. The word *corruption* comes originally from the Latin word “*corruptio*” which means “moral decay, wicked behaviour, putridity or rottenness”.¹⁰ But in the last decades corruption has not only been a moral problem, it is also a practical problem with economic costs, undermining good governance and has serious implications for individual lives and the development of societies.¹¹

Many definitions of the term can be found, both narrow and wide, which often depend on whether the focus is on single aspect or comprehensive. According to the World Bank, corruption is defined as “abuse of public office for private gain”.¹² This is the most conventional definition. For further understanding of the term the World Bank states that public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It can also be abused when private agents actively offer bribes to thwart public policies and processes for competitive profit and advantages. Furthermore, public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the diversion of state revenue or theft of state assets.¹³ This definition is very simple but enough to be of use in most instances of corruption. Yet, it does not explain the term explicitly. For example it does not explain the causes and effects of corruption, nor does it take into account all forms of corruption. This definition focuses on state and society relations, or what is called public to private corruption.¹⁴ To define it more precisely, corruption can be defined as “an act done with intent to gain some advantage inconsistent with official

¹⁰ ICHRP, “Corruption and Human Rights”, p. 15.

¹¹ NORAD, “NORAD’s Good Governance and Anti-Corruption Action Plan”, February 2000, p. 7.

Available at:

<http://www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109368>, 30th August 2010.

¹² World Bank, “Helping Countries Combat Corruption, The Role of the World Bank”, September 1997. Available at: <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/coridx.htm>, 8th September 2010.

¹³ Ibid.

¹⁴ NORAD, “Good Governance and Anti-Corruption Action Plan”, p. 7.

duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it, is not offered by another".¹⁵ According to this definition corruption is a violation of public interests and includes actions which favour whoever provides the rewards and consequently has negative implications for other individuals and their interests. It seems to be seen as an abnormal behaviour associated with a specific motivation namely that of private gain at public cost.¹⁶ These definitions are useful, but they only describe a portion of the overall problem of corruption. Furthermore, within the scope of these general definitions, there seems to be no universal consensus about what specific sorts of conduct should be included or excluded, and they do not attempt to enumerate or precisely delimit.¹⁷ There have been many criterions in the literature that definitions that are applied to corruption may vary from country to country in accordance with legislation, cultural values, customs and the nature of problem and other factors as it appears in each country.¹⁸ Due to these factors and the complexity of the relationship between law and custom and law and cultural diversity, it is often argued that what constitutes corruption may be different between countries and difficult to define in terms that are universally valid.

All in all, there are numerous long running debates surrounding the very definition of corruption.¹⁹ That has influenced the legal field, as the term corruption is usually used to group criminal acts which correspond to the general notion of an abuse of entrusted power, rather than defining the term. Most anti-corruption instruments reflect that, since they do not provide a general definition of corruption nor criminalize it, instead they enumerate criminal acts that amount to corruption.²⁰ During the negotiations of the UNCAC, UN Member States carefully considered the opportunity for the global anti-corruption treaty to provide a legal definition of

¹⁵ The Lectric Law Library, "Corruption". Available at www.lectlaw.com/def/c314.htm, 23rd September 2010

¹⁶ Siddiquee, Noore Alam, "Combating Corruption and Managing Integrity in Malaysia: A Critical Overview of Recent Strategies and Initiatives", *Springer Science and Business Media* 2009, p. 153-155. Available at: <http://www.springerlink.com/content/824p554241874r18/fulltext.pdf>, 21st September 2010.

¹⁷ The UN Global Compact and TI, "Reporting Guidance on the 10th Principle against Corruption", 2009, p. 18. Available at: http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf, 6th September 2010.

¹⁸ UNODCCP, "Global Dynamics of Corruption, The Role of the United Nations Helping Member States Build Integrity to Curb Corruption", October 2002, p. 2. Available at: <http://www.unodc.org/pdf/crime/gpacpublications/cicp3.pdf>, 21st September

¹⁹ Johnston, Michael, *Syndromes of Corruption: Wealth, Power, and Democracy*, Cambridge University Press 2005, p. 11.

²⁰ ICHRP, "Corruption and Human Rights: Making the Connection", p. 16.

corruption. But the conclusion was that any attempt to find comprehensive definition would inexorably fail to address some relevant forms of corrupt behaviour.²¹

Most definitions of corruption relate corruption to public official behaviour that is regarded as unlawful and improper in which they are seeking to promote private benefits, but seems to leave out the possibilities of private to private corrupt behaviour. Very little research has been done on the private form of corruption and it has been argued that, according to the most common definition of corruption, it is a purely bureaucratic concept not applicable to the private sector. The reason might be that it seems to be very difficult to define corruption satisfactorily in a private context.²² Regardless of the fact that the UNCAC criminalizes acts that relates both to public sector and private sector including private to private corruption.²³

The boundary between what is corrupt and what is not is not always clear in fast moving and changing societies, therefore, the term corruption might best be applied broadly.²⁴ Corruption is a phenomenon that refers to many different human behaviours and activities in differing circumstances with different causes and effects. As a result there is no universal comprehensive definition and it will be difficult to formulate one. Therefore, the issue will scarcely be settled in this thesis or as long as the corruption problem exists. But to be able to criminalize corruption and punish offenders, there is a need for broad understanding of the economic, social, cultural, political, and civil factors which contribute to corruption and additional measures based on that understanding.²⁵

2.1.1 Corrupt Acts

The international anti-corruption Conventions call for the criminalisation of corrupt acts. By reviewing the agreements that States have reached while adopting anti-corruption instruments, it is possible to see what they generally agree are corrupt acts. Most of them though, do have non-exhaustive list of acts that constitute corruption. The UNCAC is a good source to gain an idea what are generally agreed

²¹ UNODCCP, "Global Dynamics of Corruption", p. 16.

²² Dahlström, Tobias, "Causes of Corruption". PhD. from Jönköping International Business School, 2009, p. 46.

²³ UNCAC, Article 21 and Article 22.

²⁴ Johnston, Michael, *Syndromes of corruption*, p. 11.

²⁵ UNODCCP, "Global Dynamics of Corruption", p. 10.

to be corrupt acts, as it provides the most recent and comprehensive list of such acts.²⁶

The UNCAC provides that each State Party to the Convention should adopt such legislative and other measures as may be necessary to establish criminal offences when corrupt acts are committed intentionally. Bribery²⁷ is the behaviour most associated with corruption nowadays.²⁸ Other corruption acts are embezzlement,²⁹ trading in influence,³⁰ abuse of functions or position,³¹ illicit enrichment,³² laundering of proceeds of crime,³³ and obstruction of justice.³⁴ This is not an exhaustive list of acts, as progressive development in the future could enlarge this list to include other acts of corruption,³⁵ as one of the ways of dealing with a crime is to legislate against conduct that is seen as a crime.³⁶

These acts can take the form of grand and petty corruption, which relates to the position of the involved people and the values in the transaction.³⁷ Grand corruption occurs when high-level officials use their entrusted power to illegally enrich themselves or to sustain their power. It takes place at the top level of the public sphere, where policies and rules are formulated.³⁸ It can be a purely public sector phenomenon or involve both public and private agents. It often takes the form of embezzlement, by diverting developing funds into private pockets. In the case of public and private interactions, private sector actors use, for example bribes, to influence the form of the market. Sometimes it is described as “crony capitalism”, in which political networks dominate important private assets, or “state capture”, in which private firms are able to influence public power to their own benefit.³⁹ Grand

²⁶ ICHRP, “Corruption and Human Rights”, p. 18.

²⁷ UNCAC, Article 15 Bribery of national public officials, Article 16 Bribery of foreign public officials and officials of public international organizations, Article 21 Bribery in private sector.

²⁸ Dahlström, “Causes of Corruption”, p. 4.

²⁹ UNCAC, Article 17 Embezzlement, misappropriation or other diversion of property by a public official and Article 22 Embezzlement of property in the private sector.

³⁰ UNCAC, Article 18.

³¹ UNCAC, Article 19.

³² UNCAC, Article 20.

³³ UNCAC, Article 23.

³⁴ UNCAC, Article 25.

³⁵ ICHRP, “Corruption and Human Rights”, p. 18.

³⁶ Kututwa, Noel and ICHRP, “How to Combat Corruption While Respecting Human Rights”, July 2007, p.3. Available at: <http://www.ichrp.org/files/papers/135/131 - Noel Kututwa - 2007.pdf>, 1st October 2010.

³⁷ NORAD, “Good Governance and Anti-Corruption Action Plan”, p. 8.

³⁸ U4, “Corruption glossary”. Available at: <http://www.u4.no/document/faqs5.cfm#grandcorruption>, 14th October 2010.

³⁹ Kenny, C., Søreide, T., “Grand corruption in Utilities”, *Policy Research Working Paper 4805*, 2008, p. 7. Available at: <http://elibrary.worldbank.org/docserver/4805.pdf>, 1st October 2010.

corruption shares some features with petty corruption and therefore the dividing line between them is often blurred. However, grand corruption can be more deeply destructive of state function, by bringing the state to the edge of outright failure and have a negative impact on the economy.⁴⁰ Petty corruption as opposed to grand corruption, involves persons in a position of low level authority who profits personally from making choices that distorts the goals of the institution that they represent.⁴¹ It can lead to unfair and inefficient distribution of scarce benefits, undermine the purpose of public programmes, and by doing so undermine the state legitimacy. This often takes place where pay scales are generally low which may tempt officials to supplement their income with corrupt behaviour.⁴² Moreover, when corruption reaches the highest levels, it is also likely to prevail lower down as a way of buying the support of petty officials.⁴³ All acts and forms of corruption have damaging effects on society at large. Therefore an effective anti-corruption strategy should be able to include both grand and petty corruption simultaneously.⁴⁴

2.2. Corruption and Poverty

Corruption exacerbates and promotes poverty, it has been demonstrated that “Corruption has direct consequences on economic and governance factors, intermediaries that in turn poverty.”⁴⁵ Economic empirical researches demonstrate that there are links between corruption and economic growth, as it discourages markets, foreign and domestic investments, diverts investments in infrastructure and institutions, lowering the quality of public infrastructure, weaken entrepreneurship, decreases tax revenues and by doing so it erodes the quality of life.⁴⁶ Further it has been shown that corruption also exacerbates income equality, as it changes the shape of the economy, the policy, and legal frameworks. Corruption leads to inequality whereas it allows some to gain more than others, as those with capital and power are able to bend the law or government rules in their favour leading to unfair

⁴⁰ Ackerman, Susan Rose, “Corruption and Government”, *International Peacekeeping*, Vol. 15, No. 3, 2008, p. 331.

⁴¹ Kenny, “Grand corruption in Utilities”, p. 7.

⁴² Ackerman, “Corruption and Government” p. 330-331.

⁴³ Ibid.

⁴⁴ Siddiquee, “Combating Corruption and Managing Integrity in Malaysia”, p. 156.

⁴⁵ Chetwynd, E., Chetwynd, F. and Spector, B., “Corruption and Poverty”: A Review of Recent Literature”, January 2003, p. 3. Available at: <http://www.u4.no/document/literature/corruption-and-poverty.pdf>, 10th December 2010.

⁴⁶ Ackerman, “Corruption and Government”, p. 332.

distribution of government resources and services. Further corruption lowers productivity and reduces progressive tax revenues, which undermines the government's ability to provide basic services, leading lower income households to pay higher proportion of their income in bribes than middle or the upper income households do. Economic growth and income inequality link corruption to poverty.⁴⁷ However it is unclear if economic growth and income inequality are causes or consequences of corruption.⁴⁸

Corruption undermines effective function of democratic institutions and citizen's participation, and lowers the quality of the government, leading to lower quality and access to infrastructure and services. Where for example funds allocated to basic services are diverted to private pockets there tends to be under-investment in human capital such as, education and health expenditures which are often given lower priority. The consequences can be very severe in the developing countries causing higher infant mortality rate and increase in school dropout,⁴⁹ as employees in these sectors turn to bribery as a way to regain some of their lost wages.⁵⁰ The burden of petty corruption falls disproportionately on people that are without resources to pay bribes. When State has impaired governance it increases inefficiency and inequity, making it unable to decrease poverty as they restrict economic growth leaving them unable to control corruption.⁵¹ The social effects of corruption are the most damaging of all. It undermines the civilians trust in the government and its institutions. This leads to disappointed civilians, resulting in a weak civil society. That clears the way for democratically elected leaders and despots to turn national resources into personal gain, acting corruptly becoming the norm.⁵²

It can be politically difficult and expensive to reform the basic public services and often beyond the capacity of many developing countries. The World Bank and IMF have assisted many countries in need. The IMF and the Bank have often insisted on reductions in the wage bill as a condition for their assistance. This has caused decreased payments to the government, as this fiscal pressure has led

⁴⁷ Chetwynd, "Corruption and Poverty", p. 3.

⁴⁸ Ackerman, "Corruption and Government", p. 322.

⁴⁹ Chetwynd, "Corruption and Poverty", p. 3.

⁵⁰ Ackerman, *Corruption and Government: Causes, Consequences and Reform*, p. 87.

⁵¹ TI, "Frequently asked questions about corruption". Available at:

http://www.transparency.org/news_room/faq/corruption_faq#faqcorr1, 13th October 2010.

⁵² Ibid.

governments cut spending. Hence, it has unwittingly contributed to corruption as the governments carries out pay cuts or stops paying wages because it is politically easier to manage then firing workers selectively. This often leads employees to corrupt behaviours to regain some of the lost wages. The Bank and the IMF have adopted specific strategies against corruption to find a way so these counterproductive policies do not happen.⁵³

This has shown that the problem of corruption is mainly manifested in institutions responsible for governance. Therefore corruption poses serious challenges on governance, as State cannot achieve the goals of development without ensuring corruption-free governance.

Governments and international agencies have diverted much effort to search for effective measures to control corruption, which has led to a variety of strategies and institutional initiatives around the world. Still there is a general lack of agreement on what approaches work and explanations for the success and failure of anti-corruption strategies.⁵⁴ It is clear that if the fight against corruption is to be successful, changes have to be made with regard to international cooperation and be effective in all parts of the globe, equally in big and small, rich and poor countries.⁵⁵

2.2.1 The Cost of Corruption

It is hard to quantify the cost of corruption into some exact amount, as corruption is a secretive activity. It is virtually impossible to know exactly how much money is invested in corrupt acts annually. The World Bank has however on numerous occasions released estimated cost of corruption in society. The Bank has for example estimated that over one trillion dollars are spent on bribes alone each year, which is more than ten times the amount of money spent on developmental aid.⁵⁶ The scope of this large estimated sum, which is diverted into bribes, is frightening when compared to the lost opportunities that occur when public expenses are diverted away from basic needs such as housing, health care and education.

⁵³ Ackerman, *Corruption and Government: Causes, Consequences and Reform*, p. 87.

⁵⁴ Siddiquee, "Combating Corruption and Managing Integrity in Malaysia", p. 154.

⁵⁵ *The Seoul Findings 11TH International Anti-corruption Conference*, 11th IACC May 2003, p. 4. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019160.pdf>, 15th October 2010.

⁵⁶ World Bank, "How large is the Global Corruption Industry, measured in term of financial amounts per year worldwide?" Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>, 18th October 2010.

Economically, the cost is significant as corruption increases the price of doing business by at least the amount of the bribe paid to secure favourable treatment. The social cost of corruption is even harder to quantify. Any estimated social costs in amount of money would be inadequate to the task of measuring the human tragedy behind illiteracy, insufficient health and medical care, starving people and death.⁵⁷ Corruption can only be beneficial for a few individuals, but is costly to the society, governments and private sectors in the long run.

2.3. The Link between Corruption and Human Rights: Why are Human Rights Relevant to this Issue?

There is increasing awareness in the international community of the scourge impact of pervasive corruption on human rights. It was argued in the Seoul findings, that “large-scale corruption should be designated a crime against humanity, as for many around the world it falls into the same category as torture, genocide and other crimes against humanity that robs people of their human dignity”.⁵⁸ The findings condemned “corruption as immoral, repugnant and unjust to the ideals of humanity enshrined in the Universal Declaration of Human Rights”⁵⁹, and confirmed the conviction that “all human beings have basic human rights to live in a corruption free society”.⁶⁰ The UN treaty bodies have concluded that, where corruption is widespread, States cannot comply with their human rights obligations.⁶¹ Further the HCHR has noticed the importance of taking measures, both with countries and at the international level that promote transparency and fight corruption, that including entry into force and implementing the UNCAC to eliminate corruption and the multiple negative impacts that it has on human rights.⁶²

The focus on the negative effects that corruption has on economic growth often fails to give significance to the effects it has on people’s lives, especially minority groups, such as those living in poverty and disadvantaged women.

⁵⁷ TI, “Frequently asked question about corruption”

⁵⁸ *The Seoul Findings 11TH International Anti-corruption Conference*, p. 2.

⁵⁹ Universal Declaration of Human rights, Adopted by the General Assembly Resolution 271 A (III) 10th Dec. 1948.

⁶⁰ *The Seoul Findings 11TH International Anti-corruption Conference*, p. 2.

⁶¹ See: statement by the CESCR: “States face serious problems of corruption, which have negative effects on the full exercise of rights covered by the Covenant (ICESCR)”. *Concluding observations of the CESCR : Republic of Moldova*. E/C.12/1/Add.91, Thirty-first session, November 2003, para 12.

⁶² OHCHR, *The role of good governance in the promotion and protection of human rights*, Human Rights Resolution 2005/68, para 4(d).

Economic growth has not, in itself, led to sustainable development and individuals and groups of marginalized individuals continue to face socio-economic inequality, often because of entrenched historical and existing forms of discrimination.⁶³ Detrimental corruption destroys the fundamental values of human dignity and political equality, making it impossible to guarantee the rights to life, human rights and dignity.⁶⁴ Moreover, corruption is a major obstacle for countries to achieve the Millennium Development Goals (MDGs),⁶⁵ which is a comprehensive framework that explicitly places both human rights commitments and development goals at the centre of the international agenda.⁶⁶ Member States have committed to promote and protect human rights under the eight Millennium Development Goals, which provide provisions to combat poverty and achieve gender equality, among other aims.⁶⁷

The negative impact of corruption on human rights is reflected in weakening institutions and lack of public trust in government. Corruption impairs the ability of governments to ensure accountability and fulfil their obligations in the implementation of human rights, particularly the economic, social, cultural, political, and civil rights of the most vulnerable and poor.⁶⁸ Whereas for example basic human rights, such as the rights to education, infrastructure, water, and health care cannot be realized because of corruption that results in the diversion of development funds into private pockets. Corrupt government officials are abusing power as they fail to keep the interests of society in mind when taking decision, disrespecting the law, and thereby violating human rights of citizens.⁶⁹ Consequently that impedes access to basic services by all, furthermore the delivery of services of standard quality. Hence, the situation in the society worsens whereas it pushes under inequality, injustice and unfairness. It also leads to violations of political and civil rights, for example corruption may jeopardise judicial independence, when the powerful bribe the judge

⁶³ CESCR, *Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, UN Doc E/C.12/GC/20, 2009, para 1.

⁶⁴ ICHRP, "Corruption and Human Rights", p. 3.

⁶⁵ United Nations Millennium Declaration, Adopted by the General Assembly, Resolution 55/2 8th September 2000.

⁶⁶ TI, "The Anti-Corruption Catalyst: Realising the MDGs by 2015", 2nd edition 2010, available at: http://www.transparency.org/news_room/in_focus/2010/realising_the_mdgs_by_2015#promises, 20th November 2010.

⁶⁷ United Nations Millennium Declaration, The eight Goals are: eradicate extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality, improve maternal health, combat HIV/AIDS, malaria and other diseases, ensure environmental sustainability, achieve global partnership for development.

⁶⁸ HRC, *The role of Good Governance in the promotion and protection of human rights*, Resolution 7/11, 40th meeting 2008, p. 2.

⁶⁹ ICHRP, "Corruption and Human Rights", p. 10.

for favourable decision, and discrimination against the poor and marginalized.⁷⁰ Corruption also threatens the right to participation and freedom of expression, as these rights are less likely to be respected as suppression of these rights are essential for officials to have opportunity to act corruptly.⁷¹

Due to corruption the number of victims affected is increasing and their situation is declining. At the same time the consequences for the responsible parties, the international and domestic officials, seem to be insignificant, if anything at all.⁷² The problem is so widespread and pervasive that one cannot really assess its full extent or whether it is expanding or not because of lack of evidence. The number of officials who have been sanctioned because of their corrupt behaviour is insignificant and certainly does not match the damage on peoples live due to such corruption.⁷³ By linking and finding the nexus between corruption and human rights we might move closer to international consensus that corruption has a negative impact on human rights, especially on vulnerable, poor, and disadvantaged women, and that fighting corruption might lead to enhancement of human rights for minority groups.

2.3.1. Integrating Human Rights to the Anti-Corruption Framework: The Need for Special Protection of Women, Poor and Vulnerable

While corruption violates the rights of all those affected by it, it has a disproportionate impact on people that belong to vulnerable groups, such as marginalised women, people living in poverty, and children. Their vulnerability often makes them easier victims of corruption, when international and domestic corruption preventive measures are inadequate.⁷⁴ Hence, they are often effectively outside the system of social and legal protection available to other members of society as they generally lack access to resources. Vulnerable, poor and disadvantaged women are in that way discriminated and suffer distinctive forms of exclusion and oppression due to corruption. For instance, vulnerable groups are more reliant on public services, which are often performing poorly with employees acting corruptly. Corruption in such cases can have detrimental impact and magnify the pre-existing human rights

⁷⁰ ICHRP, "Corruption and Human Rights", p. 37.

⁷¹ Ibid, p. 45.

⁷² UNODCCP, "Global Dynamics of Corruption", para 63.

⁷³ UNDOC, "Report on the Second United Nations Interagency Anti-Corruption Co-ordination", July 2002. Available at: http://www.unodc.org/pdf/crime/corruption/interagency_coordination/Report_2.pdf, 3rd October 2010.

⁷⁴ ICHRP, "Corruption and Human Rights", p. 7.

problems of such groups, as they are likely to disproportionately suffer from impact of corruption on the quality, cost, and availability of public services. As corruption discriminates the access to public services in favour of those willing and able to offer bribes.⁷⁵

Corruption reinforces and perpetuates existing gender inequalities, as it disproportionately affects women and girls. Women are globally over-represented of poverty and under-represented in decision-making processes, making them even more disadvantaged and vulnerable. In addition, disadvantaged women have fewer opportunities to access public services such as education and health as a result of multiple forms of discrimination, precisely in developing countries. Corruption in the provision of basic public services such as health care and education can have negative and disproportionate consequences for women. It can seriously compromise their access to such services, causing illiteracy and declining health. Corruption also affects women in a special way as they are primary users of public services due to their gender roles as primary carers for families and their need for services during their reproductive years. Women are also exposed to corruption that involves forms of sexual and physical violence. As a result corruption can exacerbates gender gaps as women face more economic, social, cultural, and political discrimination in a corrupted society.⁷⁶

International human rights law have identified that vulnerable groups, including women, poor, children and ethnic minority groups, need special protection. Human rights are universal and it is the cornerstone of international human rights law. Human Rights law guarantee protection for individuals and groups against actions and omissions that interfere with fundamental freedom, entitlements and human dignity.⁷⁷ The Universal Declaration on Human Rights emphasizes that “All human beings are born free and equal in dignity and rights”.⁷⁸ The notion of the

⁷⁵ U4 and TI, “Impact of corruption on indigenous people“, *Number 245* 2010, p. 2-3. Available at: <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=245>, 27th October 2010.

⁷⁶ Alolo, Namawu Alhassan and the International Council on Human Rights Policy, “Corruption, Human Rights and Gender: An Empirical Investigation Ghana” 2007, p. 1. Available at: <http://www.ichrp.org/files/papers/134/131 - Namawu Alolo - 2008.pdf>, 7th December 2010. See further, ICHRP, “Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities”, 2010, p. 58. Available at: http://www.ichrp.org/files/reports/58/131b_report.pdf, 7th December 2010. and TI, “Corruption and Gender in Service Delivery”, p.1-4.

⁷⁷ OHCHR, “Frequently asked Questions on a Human Rights-Based Approach to Development Cooperation”, HR/PUB/06/8 2006, p. 1. Available at: <http://www.ohchr.org/Documents/Publications/FAQen.pdf>, 17th October 2010

⁷⁸ UDHR, Article 1.

international human rights framework has further been expanding through the development of economic, social, civil, and political rights, as enshrined in the two international covenants, International Covenant on Economic, Social and Cultural Rights⁷⁹ and International Covenant on Civil and Political Rights.⁸⁰ They have a lot to do with ensuring human dignity. They contain the fundamental rights and freedom that are recognised as being universal in nature and essential to the enjoyment of life by all people. Human rights standards, as established in these major international treaties and domestic legislation, put obligations and responsibility on states.⁸¹ Human rights approach might focus attention on vulnerable groups who are particularly at risk for corrupt activities. It might provide gender perspective as women have legal rights under human rights law to be equal with men, which means that States have to eliminate all legal and factual discrimination against women in both the public and private sector.⁸²

The world's poverty, which corruption promotes and exacerbate, reflects not merely injustice and misfortune, but violations of international human rights standards, and therefore its remedying engages the international human rights legal regime.⁸³ UDHR has established that poverty is a human right issue and on the central concern.⁸⁴ Though the term poverty is not directly used in the ICESCR, the right for example health, education, and adequate standards of living have been referred to in this context.⁸⁵

In this concern human rights are primarily being challenged with abuse of power at all levels,⁸⁶ which relates it to corruption as it is an abuse of power for private gain, therefore corruption and human rights have to be discussed in parallel.

⁷⁹ International Covenant on Economic, Social and Cultural Rights, Adopted by the General Assembly resolution 2200A (XXI) of 16th Dec. 1966, entered into force 3 Jan. 1976. Available at: <http://www2.ohchr.org/english/law/cescr.htm>

⁸⁰ International Covenant on Civil and Political Rights, Adopted by the General Assembly resolution 2200A(XXI) of 16th Dec. 1966, entered into force 23rd March 1976. Available at: <http://www2.ohchr.org/english/law/ccpr.htm>

⁸¹ UN General Assembly, *Fact Sheet No.2 (Rev. 1), The International Bill of Human Rights*, 1996, p. 1-4. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>, 7th October 2010.

⁸² OHCHR, "Frequently asked Questions on a Human Rights-Based Approach to Development Cooperation" HR/PUB/06/8, p. 1.

⁸³ Salomon, Margot E., *Global Responsibility for Human Rights*, Oxford University Press 2007, p. 49.

⁸⁴ CESCR, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2001/10, Twenty-first session, para 1.

⁸⁵ Ibid.

⁸⁶ Salomon, Margot, *Global Responsibility for Human Rights*", p. 49.

The international community has adopted legal frameworks to deal with each of these issues, but has not looked at how international human rights and anti-corruption agreements can complete one another. There is an opportunity to create a dialogue on how the two issues can be brought together.

Given the special place women and other minority groups have under international human rights law and their vulnerability for corruption, it is important to examine whether or not there are any special provisions in the legislation or procedures that apply to the fight against corruption in a manner that protects these minority groups and individuals, precisely poor and women. Further, to examining the organisation and institutions that fight corruption, if their measures to combat corruption protect the enjoyment of human rights and gender perspectives.

3. ADDRESSING CORRUPTION: THE CORRUPTION FRAMEWORK

3.1 Brief Historical Overview of the International Anti-Corruption

International action to fight corruption is a very recent phenomenon as the subject has long been a globally sensitive issue. Over the last years there have been several developments among international organisations that have brought the issue into the international agenda. The range of conventions and anti-corruption instruments today are reflections of an international consensus that emerged in the early 1990's when corruption was placed at the centre of development policies as it was regarded as a problem of the international economy.⁸⁷

The consensus among States was born from number of factors. The end of the Cold War is thought to have contributed to the emergence of corruption as an international problem. It removed the national security foundation for supporting and tolerating corrupt regimes around the world, but also led to increasing opportunities for corruption.⁸⁸ Corruption was then identified as an important problem that needed to be addressed and moreover in need for international agreed solutions. At the same time the post Cold War agenda of transparency, accountability, and democratisation focused the attention of major international development, financial institutions, and others on the problem of corruption. International aid organisations started to turn their attention to institutional governance and integrated anti-corruption

⁸⁷ Ackerman, *Corruption and Government: Causes, Consequences and Reforms*, p.181-185.

⁸⁸ Hess, D., and Dunfee, T.W., "Fighting Corruption: A Principal Approach. The C2 Principles (Combating Corruption)", *Cornell International Law Journal*, Vol 33, No.3, 2000, p.595.

programmes that included good governance practises.⁸⁹ With that concern, corruption began to wake up governments as it was a growing problem in the world. Some researchers claim that the trend that came with globalization, the opening up of markets, and the privatization of State owned enterprises increased opportunities for corruption.⁹⁰ Others suggest that the reduction in trade barriers in the 1980s and 1990s produced increased market access as well as it increased competition among multinational companies and with that it increased corruption in a number of important sectors. Hence, multinational companies based in the United States considered themselves disadvantaged in the global markets due to the 1977 Foreign Corrupt Practices Act,⁹¹ which imposed criminal penalties for participating in foreign bribery. The United States felt that their companies were being undercut by those who could engage in illegal handouts. The government became a leading advocate for the creation on international measurement to limit cross border bribery.⁹²

Corruption is now being addressed by broad range of institutions, including the UN, governments, multilateral and bilateral development agencies, international financial institutions, businesses, international and local civil society organisations, academic bodies, and people all over the world who have protested against corruption.⁹³ The impact of corruption has been studied explicitly, the causes been analysed and methods have been developed to measure the forms and levels of corruption. New anti-corruption bodies have been created, anti-corruption laws have been enacted and existing administrative and institution procedures have been examined explicitly. Many States have negotiated and ratified international and regional anti-corruption conventions. The adoption of the UNCAC reflected the emerging consensus internationally. Despite of this, anti-corruption organisations are still challenged to show results of achievements and demonstrate that they can significantly reduce persistent corruption.⁹⁴

⁸⁹ ICHRP, "Integrating Human Rights in the Anti-Corruption Agenda", p. X.

⁹⁰ Hess, "Fighting Corruption", p. 595.

⁹¹ TI, "When and why did anti-corruption conventions come into being?". Available at: http://www.transparency.org/global_priorities/international_conventions/conventions_explained/history, 11th October 2010. Further, The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), "was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business". The United States. Department of Justice. Available at: <http://www.justice.gov/criminal/fraud/fcpa/>, 11th October 2010.

⁹² TI, "When and why did anti-corruption conventions come into being?".

⁹³ ICHRP, "Integrating Human Rights in the Anti-Corruption Agenda", p. X.

⁹⁴ Ibid, p.17.

By analysing the anti-corruption movement from historical perspective it reflects why the focus of the corruption problem has mainly been from economic and political point of view. As the history tells us, it was in the beginning viewed as having corrosive impact on economic growth and global market place, having negative impact on the effective functioning of global capital markets. Nations also recognized that corruption lowers foreign direct investment in their country and can rob the country of significant sums in import tax revenue.⁹⁵

This evaluation and approach has proved to be inadequate as it fails to give significance to the impact corruption has on people's lives and their human rights and how it affects different groups and individuals in a bias way. Further it shows why the anti-corruption framework and programmes have been established on the assumption that corruption is gender neutral and affect women and men in the same way. Or even more so, that it was even thought of in relations to human rights or from gender perspectives.

3.2 Current Anti-Corruption Legal Sources, Organisations and the Human Rights Element

3.2.1 The aim of the Anti-Corruption Legal Movement

The international anti-corruption conventions are multilateral agreements or treaties between States, which seek to prevent or combat acts of corruption. The Conventions purpose is to provide a legal basis for demanding legislative changes to fight corruption. The adoption of anti-corruption conventions gives a strong positive signal of the commitment and consensus by the international community to address the problem of corruption. All the conventions call for criminalisation of corrupt acts, as corruption is seen as a crime and one of the ways of dealing with a crime is to legislate against such conducts.⁹⁶

Anti-corruption conventions and instruments are especially important in establishing common standards for domestic processes, policies, practices, and institutions, which are of assistance for anti-corruption efforts at national levels. These agreements provide civil society with tools for holding their governments accountable, creating pressure on governments, and collective pressure on private sector. It also establishes ground for in which governments and other actors can

⁹⁵ Hess, "Fighting Corruption", p. 606-610.

⁹⁶ Kututwa, "How to Combat Corruption While Respecting Human Rights", p. 3.

discuss corruption issues and review anti-corruption efforts.⁹⁷ But to what extent do these anti-corruption conventions comply with human rights standards. That might be complex to examine as all of these instruments raise concern about inconsistent rules, overlapping enforcement, and the lack of common definitions.⁹⁸ It is important for the organisations responsible for each convention to coordinate their work in order to succeed and promote clear and well understood approaches for civilians being able to rely on them.

3.2.2 United Nation Convention against Corruption: The Framework and the Scope of the Convention

The UNCAC is a legally binding international anti-corruption instrument created under the auspices of and entered into force in December 2005.⁹⁹ Which makes it the most recently adopted anti-corruption convention. So far there are 148 countries bound by the convention,¹⁰⁰ which has worldwide coverage, making it the only anti-corruption treaty open to universal membership, as all other conventions against corruption are regional.¹⁰¹ The UNDOC in Vienna serves as secretariat for the UNCAC. The UNCAC has 71 articles addressing numerous tools to combat corruption. Many of its provisions are mandatory while others are either recommended or optional. In addition, most provisions make some references to working within the principles of a State's domestic law, which allows a room for different interpretation of the requirement in any given country.¹⁰²

The Convention seeks to prevent corruption and includes measures to this effect, such as model preventive policies that are directed both at the public and private sector. The Convention has a broad definition of what falls under public official in accordance with Article 2. It addresses the cross border nature of corruption with provisions on international cooperation. State Parties i.e. countries that have

⁹⁷ TI, "How do anti-corruption convention and instrument help?". Available at: http://www.transparency.org/global_priorities/international_conventions/conventions_explained/purpose, 10th December 2010.

⁹⁸ ICC, "Combating Extortion and Bribery", 2005 p. 11. Available at: <http://www.icc.se/mutor/iccrules2005.pdf>, 5th December 2010.

⁹⁹ UNCAC.

¹⁰⁰ UNODC, Doc.A/58/422. Available at: <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>, 11th December 2010.

¹⁰¹ ICHRP, "Corruption and Human Rights", p. 18. See further, U4, "UNCAC in a nutshell, A quick guide to the United Nations Convention against Corruption for embassy and donor agency staff", 2010, p.1. Available at: <http://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>, 10th December 2010.

¹⁰² Ibid.

ratified the Convention, are obligated to help each other in cooperation to prevent and fight corruption,¹⁰³ including prevention, investigation, and the persecution of offenders. The Convention seeks to cover detection, sanctioning, and promote technical assistance and transparency, furthermore, the return of the profit of corruption. It asks for the participation of civil society organizations and citizens in accountability processes and underlines the importance of citizen's access to information's. Its extent of provision recognises the importance of both punitive and preventive measures.¹⁰⁴ The Convention introduced a comprehensive set of standards, measures, and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. The key chapters of the Convention will be described below.

Chapter IV of the Convention is dedicated to prevention measures, where it is stated under Article 5(2) that each State Party shall endeavour to establish and promote effective practices aimed at prevention of corruption. That includes model preventive policies, such as establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties in accordance with Article 6. Under Article 8, each State shall promote integrity, responsibility and honesty among their public officials and for those who use public services must expect a high standard of conduct from public officials and servants. In public finances transparency, competition and accountability must be promoted. Specific requirements are established in particular critical areas of the public sector to prevent corruption, such as Article 9 the public procurement and Article 11 judiciary. Article 13 calls on State Parties to promote the active participation of individuals and groups outside the public sector, such as civil society and non-governmental organizations, in the prevention of and the fight against corruption and to raise public awareness of corruption and what can be done about it.

Chapter III is dedicated to criminalization and law enforcement, Article 27 requires States to establish criminal and other offences to cover wide range of acts of corruption, if they are not already crimes under domestic law. It goes beyond previous anti-corruption instruments, criminalizing not only basic forms of corruption as bribery according to Articles 15, 16 and 18, and embezzlement of public funds according to Article 17 and 22, but also the concealment under Article 24, laundering

¹⁰³ UNDOC "Convention highlight".

¹⁰⁴ U4, "UNCAC in a nutshell", p. 1.

of the proceeds corruption under Article 23 and trading in influence under Article 18. Offences committed in support of corruption that are also dealt with, include obstructing justice according to Article 25 and money laundering according to Article 14. The offences also deal with the problematic areas of private sector corruption under Articles 21 and 22. Furthermore, by a virtue Article 26 requires liability of legal persons i.e. companies.

State Parties are bound by the Convention to cooperate in every aspect to curb corruption under chapter IV, as they should cooperate in the investigation and prosecution of offences defined in the Convention according to Article 43. Moreover, they shall render specific forms of legal assistance in gathering and transferring evidence for the use in court, cooperate in law enforcement and transfer sentenced persons in accordance to Articles 45, 46, 47, 48 and 49. Article 31 requires States to undertake measures which will support the tracing, seizure, freezing and confiscating of the proceeds of corruption. It is mandatory to cooperate in criminal matters but in civil and administrative matters it must be considered.¹⁰⁵ Articles 32 and 33 recognize the need for States to take measures to protect witnesses, reporting persons, and victims of corruption. Further, Article 32 recognizes the right of entities or persons who have suffered damages from corruption, to initiate legal proceedings for compensation. The recovery of stolen assets under chapter V is said to be the fundamental principle of the Convention, according to Article 51 State Parties are supposed to afford one another the widest measures to cooperate and assist in that regard. The Convention is innovative on these grounds as it is the first treaty to reference the recovery of stolen assets as a priority in the fight against corruption. This chapter is said to be the reason why so many developing countries have ratified the Convention.¹⁰⁶ This is a particularly important issue for many developing countries where corruption activities have been involved in eating up natural resources and wealth. Several provisions specify how they should render these measures. An effective asset recovery provision serves to support the efforts to redress the worst effects of corruption while sending the message that there is no place to hide illicit assets. The State of request has to prove ownership before

¹⁰⁵ U4 "UNCAC in a nutshell", p.2.

¹⁰⁶ Ibid.

receiving their assets, but in some cases the funds may be returned directly to individual victims.¹⁰⁷

When the Convention was negotiated it was known that many developing countries would have difficulties meeting its requirements.¹⁰⁸ Chapter VI provides for technical assistance and information exchange, for example under Article 62, States are asked to assist and support the developing countries financially and materially, and to help them to implement the Convention successfully.

Highlights of the Convention are that it calls for preventive measures and the criminalization of the most prevalent forms of corruption, international cooperation on investigation and prosecution, asset recovery, and technical assistance.

Despite the Conventions comprehensiveness, it has several weaknesses. There is no provision on a monitoring mechanism. Rather, responsibility for reviewing implementation of the Conventions lies with the Conference of State Parties. Many of the provisions are non-mandatory which creates a risk of failure to develop common standards, e.g. private sector corruption, political party funding, and whistleblower protection.¹⁰⁹

UNCAC is a good tool to foster international exchange of good practises, expertise, and experiences. Further, it can be instrumental in coordinating international assistance, as the Convention provides universally agreed concept of corruption acts and ways to address it within one framework.¹¹⁰

As the leading international framework and principal source for anti-corruption rules, the thesis will mainly be focusing on how integrating human rights to this Convention could help people in gaining their human rights and dignity while curbing corruption.

3.2.3 Regional Anti-Corruption Conventions

The contribution of other anti-corruption conventions and institutions cannot be underestimated in the fight against corruption as they also provide guidance and support. A number of international anti-corruption conventions have been agreed

¹⁰⁷ Ibid, p.3.

¹⁰⁸ TI, "First global convention against corruption to come into force", 2005. Available at: http://www.transparency.org/news_room/in_focus/2005/uncac, 7th December 2010.

¹⁰⁹ U4, "Conventions overview". Available at: <http://www.u4.no/themes/conventions/intro.cfm>, 4th November 2010.

¹¹⁰ U4 "UNCAC in a nutshell", p.6.

upon during the last decade. This is only an overview of the most influential conventions, along with the discussed UNCAC.

The regional actions promote anti-corruption instruments in order to strengthen regional capacity to fight corruption. Their main contribution is establishing cooperation among their State Parties with preventive measures, technical assistance, criminalization, and law enforcement, including extortion by public officials.¹¹¹ Regional conventions are important as some anti-corruption methods will have to be tailored to suit existing regional conditions where local activists and NGO's work with them.¹¹²

It is apparent that these frameworks reflect a real political consensus and will to change the international approach to curb and prevent corruption and represent an exciting example of regional and global synchronicity.¹¹³

3.2.3.1 The Inter-American Convention against Corruption

The OAS Convention¹¹⁴ was the first juridical anti-corruption instrument of its kind, which was adopted in Venezuela in 1996 and came into force in 1997. It has been widely adopted by the OAS member States which include the American Hemisphere, along with the Caribbean nations,¹¹⁵ as 34 States have ratified it, all except for Barbados.¹¹⁶ The Convention recognised the negative impact of corruption and the importance of coordinating efforts to fight it. In addition the OAS subsequently adopted the Inter-American Program for Cooperation in the Fight against Corruption in 1997. It sets out guidelines to implement the Convention and to combat corruption and works in four areas; legal, international, institutional, and civil society.¹¹⁷

¹¹¹ TI, "What are anti-corruption conventions?". Available at: http://www.transparency.org/regional_pages/americas/conventions/what_are_anti_corruption_conventions, 20th October 2010.

¹¹² Carr, Indira and Brass, "Fighting Corruption Through Regional and International Conventions: A Satisfactory Solution?", *Working Paper Series* No. 33 2006, p. 36. Available at: <http://www.brass.cf.ac.uk/uploads/WP33FightingCorruption.pdf>, 3rd October 2010.

¹¹³ Moleketi, Fraser, "The African Union Convention on Corruption and NEPAD's African Peer Review Mechanism", Seoul 2005, p. 3. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan021256.pdf>, 17th November 2010.

¹¹⁴ Inter-American Convention against Corruption, Adopted at the third plenary session, held on March 29th 1996, entry into force 6th March 1997.

¹¹⁵ Gonzalez, Jorge G., "The OAS and the fights against corruption in the Americas", p. 1. Available at: <http://www.oecd.org/dataoecd/9/1/2731127.pdf>, 14th November 2010.

¹¹⁶ TI USA, "OAS Convention against Corruption". Available at: <http://www.transparency-usa.org/what/LawRegulation/GovtAcctAbroad.htm#IACAC>, 13th November 2010.

¹¹⁷ TI, "9 Years of the Inter-American Convention Against Corruption", 2005. Available at: http://www.transparency.org/news_room/in_focus/2005/oas, 13th November 2005.

Government experts from 28 of the member States monitor the enforcement of the Convention.¹¹⁸

While the Convention is not as broad as the UNCAC it served as model for the UNCAC and for the AU Convention.¹¹⁹

According to the TI Corruption Perceptions Index 2010, Canada is the least corrupt country of the OAS member States, ranked the sixth least corrupt country in the world, while Venezuela is the most corrupted country of the member States, ranked among the twelve to fifteen most corrupt countries in the world.¹²⁰

3.2.3.2 The Council of Europe Criminal Law Convention on Corruption

The Council of Europe has been a key player in the international fight against corruption, as it became strongly interested after recognizing that corruption threatens its basic principles which it stands for, i.e. the rule of law, the stability of democratic institutions, human rights, and social and economic progress.¹²¹ The Council of Europe is an international organisation of 46 member States in the European region.¹²² The Council of Europe's Working Group on Corruption (GMC) works in cooperation with the OECD through its Working Group on Bribery in International Business Transactions.¹²³ The Council also established the Group of States against Corruption (GRECO) to monitor conventions to provide useful guidance for other countries.¹²⁴

The CoE Criminal Convention¹²⁵ was the third multinational anti-corruption convention; it was adopted in 1998 by the Council of Ministers entered into force in 2002. It was negotiated by the member States of the Council of Europe and a

¹¹⁸ TI, "OAS Convention against Corruption".

¹¹⁹ TI, "9 Years of the Inter-American Convention Against Corruption".

¹²⁰ TI, "Corruption Perceptions Index 2010", October 2010, Available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results, 10th December 2010. See further explanation on page 69 in this thesis.

¹²¹ CoE "CoE Civil Law Convention", Explanatory Report ETS No. 174, para 1. Available at: <http://conventions.coe.int/treaty/en/Reports/Html/174.htm>, 10th December 2010.

¹²² TI, "Conventions".

¹²³ Daams, A. Claire, "OECD Countries: Meaningful preventive and repressive steps against corruption: The European perspective", 9th IACC 1999. Available at: http://iacconference.org/en/speakers/details/claire_a_daams, 15th October 2010. See further, OECD, "Regional Anti-Corruption Initiative". Available at: http://www.oecd.org/document/24/0,3343,en_2649_34857_2751256_1_1_1_1,00.html, 15th October 2010.

¹²⁴ U4, "Comparative assessment of anti-corruption conventions' review mechanisms", 2008, p. 3. Available at: <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=163>, 15th October 2010.

¹²⁵ Criminal Law Convention on Corruption, Adopted by the Council of Europe 27th January 1999, entry into force 1st July 2002.

number of observers. It is open for member States of the Council of Europe and 6 non-member States,¹²⁶ it is also open for signature and ratification by other non-member States with certain preconditions. 50 States have signed the Convention, thereof 3 non-member States, but 43 have also ratified it among them is Belarus which is a non-member State.¹²⁷ Becoming a party to the Convention implies automatic submission to GRECO's monitoring process according to Article 24. The Convention represents a European regional consensus on what States should do in the areas of criminalisation and international cooperation regarding corruption.¹²⁸

3.2.3.4 The Council of Europe Civil Convention on Corruption

The CoE Civil Convention¹²⁹ is open for signature for the member States of the Council of Europe, the non-member States which participated in its elaboration, non-member States by invitation and the European Union in 1999, it was entered into force in 2003. 42 member States have signed the Convention, but 34 States have ratified it, including Belarus a non-State member.¹³⁰ It is the only anti-corruption instrument aiming at utilizing civil law remedies in the overall strategy to suppress corruption. According to Article 3 it requires States to provide civil law remedies for injured persons to defend their rights and interests, for example require compensation to those who have suffered damage as a result of corruption, such compensation may cover material damage, loss of profits, and non-pecuniary loss. It provides for the State's civil liability and responsibility for negligent omissions of supervisory bodies that result in corrupt acts of public officials according to Article 5, for the nullity of corrupt contracts according to Article 8, for the protection of employees, and whistleblowers according to Article 9. It provides international cooperation by contracting parties in civil cases of corruption under Article 13 and provides for the GRECO monitoring system according to Article 14. No reservation may be made in respect of any provision of the Convention.¹³¹ The specificity of the

¹²⁶ Belarus, Canada, Holy See, Japan, Mexico and USA.

¹²⁷ CoE, "Criminal Law Convention" CETS No 173 10/12/2010. Available at: <http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=173&CM=&DF=&CL=ENG>, 10th December 2010.

¹²⁸ U4, "Convention overview".

¹²⁹ Civil Law Convention on Corruption, Adopted by the Council of Europe 4th November 1999, entry to force 1st November 2003.

¹³⁰ CoE, "Civil Law Convention on Corruption CETS No 174", 2010, Available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=174&CM=8&DF=08/12/2010&CL=EN>

¹³¹ U4, "Convention overview".

Council of Europe lies in the multidisciplinary approach, as it deals with corruption from a criminal, civil, and administrative law point of view.¹³²

The member States have very mixed ranking of corruption, Denmark is ranked with the least corrupt countries in the world, while corruption is a problem in many Eastern European Countries, such as in Moldova, which was ranked the most corrupted of the member States, followed by Bosnia i Herzegovina and Albania. However Moldova is only in place 105 of the 178 countries that the TI researched.¹³³

3.2.3.4 The African Union Convention on Preventing and Combating Corruption

The AU Convention was adopted in Maputo in 2003 and came into force in 2006.¹³⁴ It is open to the 53 Member States of the African Union,¹³⁵ however 45 Member States have signed the Convention and despite the advantages it offers the African continent only 31 of them have ratified it.¹³⁶ It represents regional consensus on what African States should do in the areas of prevention, criminalisation, international cooperation, and asset recovery. Most countries in the continent are largely underdeveloped and remain pitiable victims to the detrimental impact of corruption. The African Union recognised that and the need for adopting measures against corruption, tailored to the African Continent. It was considered necessary as Africa has had considerable implications for the realization of socio-economic development and therefore needed to adopt specific and well defined measures that would protect its vast resources from further exploitation by more developed and powerful nations of the world through corrupt activities.¹³⁷ The Convention roots itself in democratic principles, good governance, transparency, and accountability in the management of public affairs as the provision of it is in line with the UNCAC.¹³⁸ Article 22 provides for follow-up mechanism, which requires Advisory Board of 11 members elected by the

¹³² CoE "CoE Civil Law Convention", Explanatory Report ETS No. 174. para 1.

¹³³ TI, "CPI 2010".

¹³⁴ The African Union Convention on Preventing and Combating Corruption , Adopted by the Member States of the African Union 11th July 2003, entry into force 4th August 2006.

¹³⁵ TI, "Conventions".

¹³⁶ AU, "List of Countries which have signed, ratified/added to the AU Convention", 2010. Available at: <http://www.africa-union.org/root/au/Documents/Treaties/List/African.org%20Convention%20on%20Combating%20Corruption.pdf>, 7th December 2010.

¹³⁷ Kamara, Hod Dauda, " The United Nations Convention against Corruption and The African Union Convention on Preventing and Combating Corruption and other related offences", *Sierra Leon Workshop*, September 2006, p. 2. Available at: http://www.apnacfrica.org/sierraleone_workshop_e.htm, 15th October 2010.

¹³⁸ TI, "In focus". Available at: http://www.transparency.org/news_room/in_focus/2007/uncac_africa, 17th October 2010.

AU Executive Council. It has a broad range of responsibilities according to the provision, such as promoting anti-corruption work, developing methodologies, advising governments, collecting information, developing code of conduct and building partnerships.¹³⁹

Most of the countries in the African continent rank very low in the CPI, Somalia which is ranked the most corrupted country in the world has only signed the Convention but not ratified it.¹⁴⁰

3.2.4 The missing element of Human Rights

There are no unified approaches in the conventions regarding human rights. However by examining the UNCAC through a human rights lens, there might be possibilities in finding the nexus between the Convention and human rights.

The Preamble to the UNCAC starts by referring to the concern about the seriousness of the problems and threats posed by corruption to the stability and security of society, that corruption weakens the rule of law, democratic governance, sustainable development and the rule of law.¹⁴¹ The Convention does indirectly refer twice to human rights in its Preamble by pointing out the rule of law¹⁴² and again it gives references to the principles of the rule of law in Article 5(1). For a rule of law society to exist, human rights ought to be protected as it requires that all citizens have equal rights and have equal protection before the law.¹⁴³ The Preamble also makes references to equality, responsibility and fairness before the law. The Preamble requires States to obtain support and involvement of individuals and groups outside the public sector, if their effort in this area is to be effective.

Participation enables civilians to take part in decision-making and the implementation of public policies. The UNCAC provides for participation under Article 5 and Article 13, but it can be rather limited for vulnerable groups and individuals to enforce.¹⁴⁴ The right to freedom and expression and participation is protected under

¹³⁹ U4, "Conventions overview".

¹⁴⁰ TI, "CPI 2001".

¹⁴¹ UNCAC, Preamble.

¹⁴² See the Preamble to the UDHR, "Where as it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

¹⁴³ Kumar, C. Raj. "Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India", *Columbia Journal of Asian Law*. Vol. 17, 2003, p.38-39.

¹⁴⁴ ICHRP, "Integrating Human Rights in the Anti-Corruption Agenda", p. 2.

several provisions in the ICCPR.¹⁴⁵ As the Covenant provides for every civilian to have the right to hold opinions without interference according to Article 19(1), the freedom to associate with each other according to Article 22(1), as well as Article 25 provides for the right to take part in running of the public affairs, vote and be elected with guaranteed free expression of each and every citizen will. The freedom of opinion and expression is integral for rights for full enjoyment of a wide range of other human rights. The obligation to respect freedom of opinion and participation is binding on every State party.¹⁴⁶ In the long run the participation of the citizens might empower vulnerable and break the power of the elite to perpetuate their privileges and act corruptly, as participation enables citizens to defend their interests.

Transparency and access to information are critical to prevent corruption and fundamental are human rights. If countries do not have efficient legislation that obligates access to information corruption and malfeasance continue to flourish in environment of secrecy.¹⁴⁷ Article 10 of the UNCAC provides for transparency and access to information as every State Party are required to take such measures for administration to be transparent and for citizens to access appropriate information on the administration and decision-making processes. Article 19 of the ICCPR provides for access to information, which is a fundamental human rights and pre-condition for exercising other political, civilian, economic, social and cultural rights, under human rights law. If people are well informed they are in better position to evaluate and exercise their rights, such as, to health care, education, and justice.¹⁴⁸

The Convention is about the accountability of the State to fight corruption, of officials not to accept bribes, of the claim holders not to offer bribes, and of the judiciary to punish corruption. This demonstrates how the Convention provides for human rights protection through participation, accountability, transparency, and access to information, which all help to reduce human rights violations.

This examination shows that there are common principles between human rights and the UNCAC. Although the Convention does not directly describe how

¹⁴⁵ ICCPR, 17, 18, 19, 21, 25 and 27.

¹⁴⁶ HRC, *Draft general comment No. 34 (Upon completion of the first reading by the Human Rights Committee)*, CCPR/C/GC/34/CRP.5 Hundredth session, November 2010, para. 3.

¹⁴⁷ Kiai, M., and OHCHR, "How Human Rights Principles & Approaches can Help in Fighting Corruption", UN Conference on Anti-Corruption Measures, Good Governance and Human Rights, HR/POL/GG/SEM/2006/BP.2, Warsaw 2006, p. 2. Available at: <http://www2.ohchr.org/english/issues/development/governance/docs/HR.POL.GG.SEM.2006.BP.2.pdf>

¹⁴⁸ 16th October 2010.

¹⁴⁸ ICHRP, "Integrating Human Rights in the Anti-Corruption Agenda", p. 14.

corruption can affect human rights, there are direct and indirect linkages to human rights principles within the Convention.¹⁴⁹ However there are still missing elements of fundamental human rights such as there is no mention of vulnerable and marginalized groups, such as poor, children and other groups that are exploited to particular risk due to corruption. Further, non-discrimination is only implicit in the Convention with various references to the rule of law and participation,¹⁵⁰ which is unsatisfying, given the discriminating affects corruption has on human rights.

The design of the Convention is not in the same way as human rights treaties as it is designed to the special feature that corruption is, but not as a general declaratory of rights. This makes the Convention slightly more complex than most human rights treaties. It has been argued that many States may therefore not have the capacity to understand their obligations and that anti-corruption and human rights are not mutually exclusive in some areas.¹⁵¹

As the preamble to the UNCAC couples sustainable development with the rule of law it can be argued that the Convention begins by recognizing the economic and social rights as well as the civil and political rights of people that human rights policies seek to promote and protect.¹⁵² Further, there have been arguments that human rights violations do not occur because of flaws and weaknesses in the anti-corruption norms and standards, but rather that they occur due to either abuse of power or structural weaknesses at implementation level or through misinterpretation of the standards. The main problem might be that UNCAC is nascent Convention and therefore have not been much development and interpretation of its clauses and the same counts for the regional Conventions.¹⁵³

The AU Convention states directly that there is a need to promote and protect human and people's rights and respect human dignity in its preamble.¹⁵⁴ It does not include human rights violations in its operative provisions as they are in line with the

¹⁴⁹ Oslo Governance Centre and UNDP, "The impact of corruption on the human rights based approach to development", 2004, p. 27. Available at: http://www.undp.org/oslocentre/docs05/Thusitha_final.pdf, 20th September 2010.

¹⁵⁰ Ibid, p. 28.

¹⁵¹ Matsheza, Phil, "Fighting Corruption While Safeguarding Human Rights", UN Conference on Anti-Corruption Measures, Good Governance and Human Rights, Warsaw 2006, p. 3. Available at: <http://www2.ohchr.org/english/issues/development/governance/docs/Matsheza.pdf>, 11th December 2010.

¹⁵² Oslo Governance Centre, "The Impact of corruption on the human rights based approach to development", p. 26.

¹⁵³ Matsheza, "Fighting Corruption While Safeguarding Human Rights", p. 3.

¹⁵⁴ AU Convention Preamble.

UNCAC, but there are linkages made to human rights in Article 2(4) and 3. According to those provisions it can be assumed that fighting corruption benefits human rights and moreover that it is not just an economic issue. The Council of Europe also refers to human rights in the preamble of both of the Conventions, as it emphasises that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions the moral foundations of society.¹⁵⁵ On the other hand the OAS Convention takes indirect approach to human rights as the Convention states that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as the comprehensive development of peoples.¹⁵⁶

Nevertheless, the interpretation of the Conventions provisions as they are today, are insufficient as they do not establish that corruption is a human rights violation, nor do they give any attention to vulnerable and disadvantaged groups or people which are exposed to particular risk. These legal instruments have not gone far enough to deal with the global problem of corruption as being a breach of human rights which is a crime under international law.¹⁵⁷

As is argued in this thesis the human rights focus of the UNCAC should go further and integrate human rights to the anti-corruption framework, for human rights will add to the efforts to curb corruption.

3.2.5 International Organisations and Initiatives

Since corruption emerged as a central topic on the international agenda, many actors have joined in curbing corruption. Most international organisations and agents have declared their intent to contribute to the fight against corruption. Many organisations are critically analysing and revising their strategies and approaches in a search for effective solutions. This has in many cases influenced a multitude of international and regional institutions to draft corruption specific instruments with the result that the fight against corruption has been internationalised.¹⁵⁸

¹⁵⁵ CoE Criminal Convention, Preamble and CoE Civil Convention Preamble.

¹⁵⁶ OAS Convention, Preamble.

¹⁵⁷ Kumar, Raj. C. "Corruption and Human rights: The human rights to corruption free-services - some constitutional and international perspectives" *Frontline* Vol. 19, issue 19 2002. Available at: <http://www.hinduonnet.com/fline/fl1919/19190780.htm>, 10th December 2010.

¹⁵⁸ Eigen, Peter, "Civil Society's Role in Promoting Governance and Transparency", 2003, p. 7. Available at: <http://www.oecd.org/dataoecd/34/2/19503369.pdf>, See further, Carr, "Fighting Corruption Through Regional and International Conventions", p. 9.

Though some instrument like guidelines, standard rules, principles, declarations, and recommendations have no binding legal effect they have despite that undeniable moral force and provide practical guidance to States, civil society and corporations in their conduct, therefore it is important to analyse the role they have in the fight against corruption. Moreover, the fight against corruption is a challenge not only for States but also for the international community and therefore it is important to look at these initiatives. This will be done with the aim to examine organizations impute to the fight against corruption, and if these anti-corruption efforts recognize the relations between corruption and human rights and moreover if they put any efforts on safeguarding human rights.

This is only a review over selected number of the most influent organisation, initiatives and Convention involved in the fight against corruption and their contribution to curb it.

3.2.5.1 OECD Convention on Combating Bribery of Foreign Public Officials

A very important development in the international arena was when the OECD created the OECD Convention.¹⁵⁹ The Convention has 38 signatories, including 8 non-OECD members.¹⁶⁰ The scope of the Convention is relatively narrow and specific. It includes legally binding standards to criminalise bribery of foreign public officials in international business transactions.

Most forms of corruption involve both buyer and seller, therefore it is also important to outlaw the supply side.¹⁶¹ The Convention is a principal instrument focusing on the supply side of international corruption and the sanctions of such activity. Since the Convention entry to force in 1999, all the parties to it have enacted laws making it a criminal offence to bribe foreign officials.¹⁶² The Convention aimed on extending the principles of the United States Foreign Corrupt Practices Act.¹⁶³ With the aim to clear, i.e. rid the global economy of corrupt transactions which were skewing profit margins by focusing on the use of domestic law to criminalise the

¹⁵⁹ OECD Convention, Adopted by the Negotiating Conference 21st November 1997, entry into force 15th February 1999.

¹⁶⁰ TI, " OECD Anti-Bribery Convention - Addressing the Supply Side". Available at: <http://www.transparency-usa.org/what/LawRegulation/GovtAcctAbroad.htm#IACAC>, 20th November 2010.

¹⁶¹ Ackerman, *Corruption and Government: Causes, Consequences and Reform*, p. 185.

¹⁶² OECD. Available at:

http://www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html

¹⁶³ Ackerman, *Corruption and Government: Causes, Consequences and Reform*, p. 185.

bribery of foreign public officials. It only applies to bribery but not other forms of corruption and only includes cases where bribe was paid for the conduct of international business and the gaining or retaining of some undue advantage in such business.¹⁶⁴

Now the State Parties to the Convention have adopted the 2009 Anti-Bribe Recommendation,¹⁶⁵ in order to enhance their ability to prevent, detect, and investigate allegations of foreign bribery and includes the Good Practice Guidance on Internal Controls, Ethics and Compliance.¹⁶⁶ One of the changes that came with the new recommendation is that it adopted best practices for making companies liable for foreign bribery so that they cannot be misused for bribing foreign public officials and they cannot avoid detection, investigation and prosecution for such bribery by using agents and intermediaries, including foreign subsidiaries to bribe for them.¹⁶⁷ The Convention does not address human rights, nor does the Recommendation and Guidance. The Convention recalls that bribery raises serious moral and undermines good governance.¹⁶⁸

3.2.5.2 Multinational Corporations

In the past decades the international economic system has to a large extent shaped the current form of globalization. It has also created conditions whereby corruption can flourish; having severe effects on people's lives around the world, that already have little to say about their own destiny.¹⁶⁹ Corruption in the private sector is of increasing importance to the public as many essential services and utilities have been privatized with the globalization.¹⁷⁰

Private sector corruption increases the cost of business through the management cost of negotiating prices with officials and the price of illicit

¹⁶⁴ U4, "Anti-corruption conventions and treaties". Available at: <http://www.u4.no/document/treaties.cfm>

¹⁶⁵ Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Adopted by the Council 26th November 2009. Available at: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>, 3rd October 2010

¹⁶⁶ Good Practice Guidance on Internal Controls, Ethics and Compliance, Adopted by the Council 18th February 2010, as an integral part of the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transaction. Available at: <http://www.oecd.org/dataoecd/5/51/44884389.pdf>

¹⁶⁷ OECD, "About the new Recommendation for Further Combating Bribery of Foreign Public Officials in International Business", 2009, p.1. Available at: <http://www.oecd.org/dataoecd/34/15/44281002.pdf>, 4th October 2010.

¹⁶⁸ OECD Convention, Preamble.

¹⁶⁹ Shah, Anup, "Corruption", 2007. Available at: <http://www.globalissues.org/article/590/corruption>, 21st October 2010.

¹⁷⁰ *The Seoul Findings 11TH International Anti-corruption Conference*, p. 4.

payments.¹⁷¹ For example, private firms with political connections often pay officials for favourable treatment and can therefore be less cost conscious since they are protected from competing with others on the market. The result is that the business environment becomes less secure, favouring those with capital and power. The consequences arising from this are likely to exacerbate social inequalities, because the poor and vulnerable suffer disadvantage in securing special payments and favours.¹⁷²

Corporations have an important role in fighting corruption and can do so on many fronts. They are often the supply side of bribery and partaking in embezzlement, but failure to address bribery can exact a very high cost on companies and have other severe effects on people's lives.¹⁷³ All forms of corruption are interrelated and can have detrimental impacts on human rights, therefore it is not only governments who must wake up to the challenge of tackling corruption, it is also the private sector as well to ensure that human rights are protected and that benefits of resources and globalisation flow to everyone including the world's poorest.¹⁷⁴

Leading initiatives are the OECD Guidelines for Multinational Enterprises and the U.N. Global Compact. The Guidelines were established to strengthen corporate social responsibilities. The most recent revision of the Guidelines was completed in 2000.¹⁷⁵ The Guidelines provide option for tackling corporate corruption all over the world. They express comprehensive set of recommendations addressed by adhering governments to their multinational enterprises wherever they operate, for responsible corporate behaviour, including anti-bribery standards.¹⁷⁶ They also address topics that are useful for linking up anti-corruption work in the private sector with endeavours tied to the agendas on human rights, environment, labour, and other sustainable development issues.¹⁷⁷

¹⁷¹ NORAD, "Good Governance and Anti-Corruption Action Plan", p. 8.

¹⁷² Lanza, Steven P., "The Economics of Ethics: The Cost of Political Corruption", *Connecticut Economy Quarterly* 2004 Issue, p. 2.

¹⁷³ TI, "Business principles for Countering Bribery". Available at: http://www.transparency.org/global_priorities/private_sector/business_principles, 7th December 2010.

¹⁷⁴ Eigen, Peter, "Measuring and Combating Corruption", *Policy Reform* Vol. 5(4) 2002, p. 198.

¹⁷⁵ OECD Guidelines for Multinational Enterprises, 27th June 2000. Available at: http://www.oecd.org/document/18/0,3343,en_2649_34889_2397532_1_1_1_1,00.html, 21st November 2010.

¹⁷⁶ Geus, Aart OECD Secretary-General, "Access to Remedies and the OECD Guidelines for Multinational Enterprises", EU Conference on Corporate Social Responsibility, November 2009, p. 1. Available at: <http://www.oecd.org/dataoecd/2/24/44037912.pdf>, 21st November 2010.

¹⁷⁷ TI, "Using the OECD Guidelines to Tackle Corporate Corruption", Working paper 03/2008, p. 1-2. Available at:

The U.N. Global Compact was also launched in 2000, which is a policy initiative for businesses that are committed to aligning their strategies and operations with ten internationally-endorsed principles in the areas of human rights, anti-corruption, labour, and environment.¹⁷⁸ The tenth principle, adopted in 2004, states that businesses should work against corruption. It was the response of the business community and other non-State actors to the adoption of the UNCAC.¹⁷⁹ Both initiatives are not a regulatory instrument but rather voluntary initiatives that rely on public accountability and transparency that give space for public disclosure to complete these regulations and provide a space for innovation. It opens up possibilities for civil society to use these initiatives to draw attention to irresponsible behaviour of companies and by doing so trigger corrective actions. Adhering governments are then bound by inter-governmental agreement to respond to complaints arising from alleged violations.¹⁸⁰ There is a great potential for using them to combat private sector corruption, as it is an area that remains vastly underutilised. Guidelines and codes of conduct that include both human rights and anti-corruption strategies like these do, highlight the corporate accountability to fight corruption and protect human rights.

Corporations often establish their own codes of conduct voluntary, for their employees. Code of conduct refers to company's policy as a statement that defines ethical standards for their conduct which can be drafted in various ways. It has been criticised that many companies only establish a policy for the sake of its public image but at the same time encourage employees to close a deal and gain a business however possible. Further, companies from countries that have reputations for being relatively clean of corruption are often to be major sources of corruption into other countries.¹⁸¹ The private sector plays an increasing role in improving the well being of societies, and individuals. They produce economic wealth that can lift people out of poverty and expand access to education, health care, and other essential public

http://www.transparency.org/publications/publications/working_papers/wp_03_2008_oecd, 21st November 2010.

¹⁷⁸ United Nations Global Compact. Available at: <http://www.unglobalcompact.org/>, 10th December 2010.

¹⁷⁹ UN Global Compact and TI, "Reporting Guidance on The 10th Principle Against Corruption", 2009, p. 5. Available at: http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf, 22nd October 2010.

¹⁸⁰ TI, "Using the OECD Guidelines to Tackle Corporate Corruption", p. 1-2.

¹⁸¹ Eigen, Peter, "Measuring and Combating Corruption", p. 191-192, See further Hess, "Fighting Corruption: A Principled Approach", p. 626.

services. However, lack of corporate accountability together with insufficient government oversight, corporations can foster corruption enriching a few elite at the cost of the many. Without adequate institutional legislation, code of conduct and guidelines, markets will fail to deliver their full benefits and may even become socially unsustainable.¹⁸²

3.2.5.3 International Non-Governmental Organization

The ICC was the first NGO to establish rules of conduct for corporations relating to bribery, which was published in 1977 and updated in 2005 after the establishment of the UNCAC.¹⁸³ ICC's main objective is to encourage self-regulation by companies in confronting issues of extortion and bribery and to provide business input into international initiatives to fight corruption.¹⁸⁴ The ICC established Anti-Corruption Commission in 2001, which works actively with the U.N., OECD, the European Union and the Council of Europe. The ICC's Commission on Anti-Corruption provided business input into the UNCAC implementation process. It further encouraged national governments to ratify and implement the Convention.¹⁸⁵ In 2006 the UNCAC, ICC, and other business organisations issued a declaration named Business Objectives for UNCAC which includes recommended steps to bolster monitoring and follow-up to the Convention. It has further worked alongside with the Business and Industry Advisory Council to the OECD, to follow and support the implementation and monitoring of the OECD Convention. Furthermore, the ICC has been following the development of the World Bank anti-corruption strategic plan and seeks to contribute to that and has developed recommendations on corporate whistle-blowing schemes.¹⁸⁶

¹⁸² HRC, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, Implementation of General Assembly Resolution 60/251 of 15th March 2006, U.N. Doc A/HRC/4/035 2007, para 1. See further TI, "Annual Report 2009" 2009, p. 10-11. Available at: http://www.transparency.org/publications/publications/annual_reports/ti_ar2009, 11th November 2010.

¹⁸³ Commission on Anti-Corruption, "Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations", edition 2005. Available at: http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%202005%20Revision.pdf, 20th November 2010.

¹⁸⁴ ICC, "Anti-Corruption". Available at: <http://www.iccwbo.org/policy/anticorruption/id863/index.html>, 20th November 2010.

¹⁸⁵ ICC, "UN Convention against Corruption". Available at: <http://www.iccwbo.org/policy/anticorruption/id871/index.html>, 26th October 2010.

¹⁸⁶ ICC, "Anti-Corruption". Available at: <http://www.iccwbo.org/policy/anticorruption/>, 26th 2010.

NGO's play a critical role in the promotion of the fight against corruption and to protect human rights as they can pressure State to change and work with it to make reform happen. Their role has been evolving as most States have been accepting their importance.

3.2.5.4 The World Bank and the International Monetary Fund

The World Bank and the IMF have in recent years increased their efforts to develop policies to curb corruption. The Bank and the IMF are intergovernmental pillars supporting the structure of the world's financial and economic order. They work to foster global growth and economic stability and have stated a goal of reducing poverty in the world. They are in a sense owned and directed by the governments of Member Nations and in fact, virtually every country is a member of both institutions.¹⁸⁷

In 1995 the World Bank President James Wolfensohn declared war on corruption, arguing that corruption is first and foremost an economic issue and therefore a legitimate concern of the World Bank Group.¹⁸⁸ The Bank has identified corruption as among the greatest obstacle to economic and social development. The Bank is primarily an economic institution and its approach to anti-corruption reflects this as its approach is concerned with economic causes and effects of corruption. The mission of the Bank is to reduce poverty, it has acknowledged that corruption undermines policies and programmes that aim to reduce poverty, and therefore attacking against it is critical for the Bank to achieve its goal. The Bank has stated that corruption effects are especially harmful for the poor who are most reliant to the provision of public services and hardest hit by economic decline. Since 1996, the Bank has supported more than 600 anti-corruption programmes and governance initiatives developed by its member countries.¹⁸⁹ The World Bank Group has been working on issues in strengthening its engagement on governance and anti-corruption efforts, called the Governance and Anti-corruption Strategy (GAC). It highlights attention to governance and anti-corruption issues that are critical to

¹⁸⁷ Driscoll, David and IMF. "The IMF and the World Bank, How Do They Differ?", 1996. Available at: <http://www.imf.org/external/pubs/ft/exrp/differ/differ.pdf>, 9th December 2010.

¹⁸⁸ Eigen. Peter, "Civil Society's role in Promoting Governance and Transparency", p. 7.

¹⁸⁹ World Bank, "Overview of Anti-Corruption". Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,contentMDK:21540659~menuPK:384461~pagePK:148956~piPK:216618~theSitePK:384455.00.html>, 13th October 2010.

improve development outcomes, such as, better delivery of services in health, education, and water.¹⁹⁰

The IMF has also taken up the fight against corruption. Corruption is now the central component of its lending policy. To support this, IMF has developed guide to curb corruption, The IMF's Approach to Promoting Good Governance and Combating Corruption – A Guide, which was launched in 2005.¹⁹¹ The funds approach to combat corruption emphasises prevention, concentrating on measures to strengthen governance and limiting the scope for corruption.

Many have wondered whether these institutions could do more for human rights as their strategies are in absence of explicit recognition of human rights. While these institutions are owned by governments of the world, who have demanded human rights policies, but still they are hesitant to discuss human rights openly in these institutions.¹⁹² While others have said that these institutions should not be expected to impose human rights conditions on their assistance to member countries, as they do not have expertise that is required to make judgement in this area.¹⁹³ The Bank has replied to this criticism that its status prohibits interference in the domestic political affairs of governments and that its anti-corruption poverty programmes benefit human rights.¹⁹⁴

Despite the Banks historical struggle integrating human rights principles and obligations into its policies and programmes, it is a time for the world's leading development finance institution to improve effectiveness by paying closer attention to human rights. If it would include promotion of human rights in its mandate and practices it would show other intuitions good example that there is a need to integrate human rights to reduce poverty and inequality.¹⁹⁵

¹⁹⁰ World Bank, "Governance and Anti-Corruption", 2010. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20040922~menuPK:34480~pagePK:34370~theSitePK:4607,00.html>, 13th October 2010.

¹⁹¹ IMF, "The IMF's Approach to Promoting Good Governance and Combating Corruption – A Guide, 2005". Available at: <http://www.imf.org/external/np/gov/guide/eng/index.htm>, 10th October 2010.

¹⁹² Herbertson, K., Thompson, K., and Goodland, R. of the World Resource Institute, "Bretton Woods Project: Why the World Bank Group – which is owned by the same governments that demand a human rights policy at the EBRD – is hesitant to discuss human rights openly", 2010. Available at: <http://www.bicusa.org/en/Article.11918.aspx>, 10th November 2010.

¹⁹³ Leite, Sérgio Pereira, International Monetary Fund, "The International Monetary Fund and Human Rights", 2001. Available at: <http://www.imf.org/external/np/vc/2001/090401.htm>, 10th November 2010.

¹⁹⁴ Global Policy Forum, "The World Bank Defends Its Record on Human Rights", 2002. Available at: <http://www.globalpolicy.org/component/content/article/209/43350.html>, 27th November 2010.

¹⁹⁵ Herbertson, K. "A Roadmap for Integrating Human Rights into the World Bank Group, World Resource Institute 2010", p.7.

3.2.5.5 Transparency International

TI, which was founded in 1993, is one of the most influential global anti-corruption actors and is amongst them who have done the most to draw world-wide attention to the negative impact of corruption. It is a global civil society organisation that aims to bring people together in worldwide coalition in order to end the harmful impact of corruption on men, women, and children all over the world. TI asserts that corruption hurts everyone but further that it harms the poor the most. It raises awareness of the problem by pointing out the social and economic, political and environmental harm that is caused by corruption and looks beyond the State institutions for the main causes and solutions of the issue. It promotes an international framework against corruption with its national chapter network including more than 90 countries.¹⁹⁶

The TI main effort has been through its National Chapter and its international conferences which have increased public awareness of corruption to a large and offered hope to its victims. TI focuses on building and supporting systems to combat corruption, but it does not seek to target individual cases. TI works with other international organisations to develop policies to curb corruption and further work through programs to urge State bodies, the private sector, and civil society organizations to put anti-corruption conventions into practice. TI has been working to pressure governments to agree on the UNCAC.¹⁹⁷

Another contribution of TI has been the development of the Corruption Perception Index (CPI) which provides indication of the level of corruption within countries. The list of countries in their CPI has increased steadily and includes developed and developing countries, now it ranks 178 countries.¹⁹⁸ These statistics have been published by TI on an annual basis since 1995. They have also developed The Bribe Payers Index (BPI) which assesses the supply side of corruption. It ranks the likelihood of firms from 22 top exporting countries to bribe abroad. The Index is based on interviews with almost 3.000 senior business executives working in 26 countries. Further they have developed the Global Corruption Barometer (GCB), which surveys public opinion, experience, and perception of corruption in more than 60 countries.¹⁹⁹ With these surveys they have provided knowledge about the impact

¹⁹⁶ TI, "Frequently asked questions about Transparency International".

¹⁹⁷ Eigen. Peter, "Civil Society's role in Promoting Governance and Transparency", p. 2.

¹⁹⁸ TI, "CPI 2010".

¹⁹⁹ TI, "Surveys and Indices". Available at: http://www.transparency.org/policy_research/surveys_indices/about, 9th December 2010.

of corruption, despite that corruption is a secretive activity. With these surveys TI has been an important force in raising global awareness of corruption as an international problem and of its severe affects. TI has recently researched and reported with the ICHRP, the connection of corruption and human rights violations and further on the different affects corruption has on men and women. The reports provide an important conceptual basis for aligning human rights and anti-corruption movements together, which is very desirable.

3.3 The Interrelated Roles

The examination in this chapter has shown that none of the anti-corruption legislations recognises that corruption is a violation of human rights and they seem to be gender neutral. Moreover, there seems to be lack of recognising that respect for human rights will assist efforts to fight corruption. Their main focus is on corruption as an economic issue, like most of the anti-corruption initiatives that have been established to fight corruption. Civil society actors and NGO's have therefore a very important role to play in unfolding the severe negative impacts that corruption has on society and community and deal with corruption using human rights principles and approaches. They can support citizens defending their rights and counterbalance the power of the States and multinational companies.²⁰⁰ Moreover they have promoted education that is an important aspect to prevent corruption, which is recognized under Article 13 of the UNCAC.²⁰¹ They can especially play a vital role in countries where literacy is low. It has to be ensured that lending institutors like the World Bank and IMF also benefit the poor and the vulnerable and that they take into consideration human rights and gender perspectives. That could be done if these intuitions would for example work with CSO's or NGO's such as, which could monitor their programmes to follow human rights standards.²⁰² When corruption is linked to human rights violations then human rights institutions could also act with these institutions to force accountability and create disincentives for corruption.²⁰³

²⁰⁰ Carr, "Fighting Corruption Through Regional and International Conventions", p. 36.

²⁰¹ UNCAC, Article 13(C), State Party has to take measures to "undertake public information activities that contribute non-tolerance of corruption, as well as public education programmes, including school and university curricula"

²⁰² Gathi, James Thuo, "Defining the Relationship Between Corruption and Human Rights", *University of Pennsylvania Journal of International Economic Law*, Vol. 31, No. 125, 2009, p. 72-83.

²⁰³ Terracino, Julio Bacio, "Integrating Human Rights and Anti-Corruption Policies: Challenges and Opportunities" 13th IACC 2008, p. 3-4. Available at:

The role of NGO's is also critical when it comes to press corporations to act ethically and according to code of conducts to fight corruption and respect human rights. Many NGO's have used for example the OECD Guidelines for Multinational Enterprises, which can be important tool to establish corporate social responsibility, which is important to achieve corporate compliance with human rights standards.²⁰⁴

It is not enough to have anti-corruption legislations and initiatives in place, citizens also have to refuse to participate in corrupt acts, inform relevant enforcement mechanism of the incidents of corruption and cooperate with media to expose corrupt activities. Making people aware of the short and long term scourge impacts of corrupt behaviour of the powerful few on the greater whole and the long term effects of corruption on human condition is part of the solution.²⁰⁵ If corruption is shown to violate human rights, civilian's attitude and opinion will be influenced. If people become more aware of the severe affects corruption has on human rights and public interests they are more likely to support programmes and campaigns that prevent corruption.²⁰⁶ Many corrupt cases have been exposed by the media which come up as a scandal for the persons involved. That is one of the reasons why it is important to promote freedom of expression and protect political independence of the media.²⁰⁷

If weak human rights protection may create opportunities for corruption then policies that promote human rights might prevent corruption.²⁰⁸ The opportunities to address corruption are greater than they have ever been. With a growing demand for human rights in civil societies human rights should be part of the overall anti-corruption framework. In an area of concern such as this, where progress is very much driven by law enforcement, it is imperative to ensure that human rights issues are not lost sight of. As long as there is no progress in the anti-corruption regime, human rights will continue to be sacrificed for corrupt behaviour. By indentifying the negative effects that corruption has on human rights and possibly by linking human

http://iacconference.org/en/archive/document/integrating_human_rights_and_anti-corruption_policies_challenges_and_opport/, 7th December 2010.

²⁰⁴ Feeney, Patrica, "Making Companies Accountable", 2002, p. 1-2. Available at: <http://www.oecd.org/dataoecd/16/37/2965489.pdf>, 7th December 2010.

²⁰⁵ Carr, "Fighting Corruption Through Regional and International Conventions", p. 36.

²⁰⁶ Terracino, "Integrating Human Rights and Anti-Corruption Policies", p. 3-4.

²⁰⁷ Hammarberg, Thomas, Commissioner for Human Rights, "Council of Europe Justice Minister Conference: Modernising Justice in the Third Millennium", CommDH/Speech(2010)11, p.2. Available at: http://www.coe.int/t/dghl/standardsetting/minjust/mju30/Hammarberg_en.pdf, 10th December 2010.

²⁰⁸ ICHRP, "Corruption and Human Rights: Making the Connection", p. 10.

rights approaches to corruption laws might persuade civil society and key actors to take a stronger stand against corruption.²⁰⁹

4 DEMONSTRATING THE VALUE ADDED OF HUMAN RIGHTS APPROACHES TO THE FIGHT AGAINST-CORRUPTION AND THE POSSIBILITY FOR GENDER PERSPECTIVES

4.1 Alternative Human Rights Approach

There is increasing consensus among the international community that corruption is a human rights issue and that the two should be discussed in parallel.²¹⁰ Human rights and corruption are reinforcing, as corruption tends to violate human rights and wherever human rights are not protected, corruption is given room to spread freely. Strategies to fight corruption share a great deal with human rights principles as they both emphasise transparency, accountability, and the right to obtain information from State officials. Despite that, human rights and anti-corruption organisations have not collaborated much in their work in recent years. However there is need to bring these two movements together as they have complementary skills and interests.²¹¹ As the Human Rights Council has stated;

*The fight against corruption at all levels plays an important role in the promotion and protection of human rights and in the process of creating an environment conducive of their full enjoyment.*²¹²

The main problem is to find conclusion on how these two frameworks could work efficiently together in order to safeguard human rights and curb corruption. As concluded before the anti-corruption framework does not have a direct link to human rights and human rights regime does not have a link to corruption. The Human Rights Council has further stated that;

*Effective anti-corruption measures and the protection of human rights are mutually reinforcing and that the promotion and protection of human rights is essential to the fulfilment of all aspects of an anti-corruption strategy.*²¹³

²⁰⁹ Ibid, p. 5.

²¹⁰ Kiai, "How Human Rights Principles and Approaches can Help in Fighting Corruption", p. 1.

²¹¹ ICHRP, "Integrating Human Rights in the Anti-Corruption Agenda", p. 63.

²¹² HRC, *The role of good governance in the promotion and protection of human rights*, Resolution 7/11, 40th meeting 2008, p. 2.

²¹³ Ibid.

This would seem to support the need to integrate human rights to the fight against corruption. The human rights movement would benefit the anti-corruption movement as it is nascent, while at the same time human rights regime and its jurisprudence has been increasingly well defined in recent years. As aptly described by C. Raj Kumar, an Indian writer;

*The benefit of regarding corruption as a human rights issue will enhance efforts to contain corruption, due to the development of international human rights law as an important aspect of international law, as well as national developments in constitutional, legal, and judicially recognized rights.*²¹⁴

The UNCAC provides unique opportunity to fight corruption, but human rights approach could change and contribute to the framework. If human rights like freedom of expression are not followed or where access to justice, information, health care, and education is restricted, it is difficult to hold officials to account, which gives corruption room to flourish.²¹⁵ Then there is a need to examine the problem of corruption from different perspectives that is not limited to the criminal law approach of the UNCAC, which categorises corruption with every other crime. By integrating human rights to the UNCAC and by recognising corruption as a human rights violations might create moral, political, and social response that is not generated by a crime, notwithstanding the seriousness of the act. By recognising corruption as human rights violation it would give the seriousness of corruption even more international attention as the right to be free from corruption would be established.²¹⁶ As described by Mendes;

There is a critical right missing from the Universal Declaration of Human Rights, and the two International Covenants that make up the International

²¹⁴ Kumar, "Corruption and Human Rights: Promoting Transparency Governance and the Fundamental Right to Corruption-Free Service in India", p. 35.

²¹⁵ TI, "Corruption and Gender in Service Delivery", p. 17.

²¹⁶ Kumar, C. Raj, "Corruption as a human rights issue in South Asia: law, development and governance", School of Law, City University of Hong Kong 2006, p. 5. Available at: <http://www.law.monash.edu.au/castancentre/events/2006/conf-06-kumar-paper.html>, 10th December 2010.

*Bill of Rights. That missing right is the right of all members of the human family to be free from the evil of corruption.*²¹⁷

The aim of the thesis is however to integrate human rights and the right to be free from corruption to the UNCAC, as it might be more beneficial. The reason is that the anti-corruption movement is nascent and as said before there is no consensus about the term of corruption and there has not been much development and interpretation of the UNCAC provisions. Hence, it might be too broad and insufficient to integrate corruption to the human right regime.

To support this argument and answer one of the thesis question, this chapter will examine specific human rights that have been developed under the ICCPR and ICESCR, and what they outline on the protection of economic, social, cultural, civil, and political rights, when acts of corruption, as they have been defined by the UNCAC, particularly bribery and embezzlement impede the enjoyment of these human rights. Moreover with particular emphasis on poor and the different effects corruption has on women. This will be done through examination and looking into outcomes of surveys to find out how corruption impacts human rights. The chapter will examine the human rights and groups of people that are disproportionately harmed by corruption. Rather than attempt to present information on every economic, social, political, and cultural right, the focus will be on the right to health, education, and fair justice and the explanation how corruption can restrict the access of the vulnerable and poor and by doing so violates their human rights. It will take special consideration on the effects of corruption on women and girls to find out if there is a need for gender sensitive approach to corruption. This will be done by analysing the different impact corruption has on women rights to health care and education. By focusing on specific economic, social, and cultural rights will help comparing and indentifying if there is a different impact of corruption on men and women and how integrating human rights to the anti-corruption agenda could enable women to realise their rights. This chapter examines how the use of human rights regime can strengthen the anti-corruption framework, precisely the UNCAC.

²¹⁷ Mendes, Errol. P., *Corruption: the Cancer of the International Bill of Rights- Democracy and Freedom of Expression, the Main Treatments?*, in *Bribing the Global Divide on Human Rights*, A Canada-China Dialogue, England 2003 p. 287.

4.2 The Impact of Corruption on the Poor

It is now generally understood that poverty is a result of exclusion and disempowerment.²¹⁸ Poverty is multidimensional as it is a lack of opportunities, material-, physical- and social goods, such as productive assets and savings, ownership, hunger, poor education, health, freedom from fear and violence, social belonging, the ability to exert political influence, cultural identity, and the ability to live a life with respect and dignity.²¹⁹

Corruption is responsible for the non-realization of basic human needs by converting to private pockets, resources meant for the purchase of public goods. Live of people living in poverty can be made worse by exposure to violence and limited access to public services, security, and justice systems. Hence, corruption is one of the factors that keep millions of people all over the world in poverty because it can deprive them of access to essential public services such as health, education, and utilities. When the poor are in absence of effective services from the State, they end up trapped in their situation as they do not have resources or power to get out of it. Poor people often suffer not only from corrupt and illegal decision but as researchers have suggested poor people also have fewer opportunities than elite and middle-class groups to inform policy makers of their needs²²⁰

Corruption also affects poor indirectly as it discourages foreign investment, which can cause significant economic losses as investors steer clear of countries where corruption levels are high. Unfortunately the countries most in need of foreign investment having high percentage of poverty tend to be those who suffer most from widespread corruption.²²¹ This reduces their net income, distorts programmes, policies and strategies that aim to meet the basic needs of poor and lift them out of poverty. Corruption therefore hurts the poor disproportionately by diverting funds

²¹⁸ CESCR, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc E/C.12/2001/10, Twenty-first session, November 2003, CESCR has defined poverty in the light of the International Bill of Rights as: “a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights”, para 8. Further, CESCR has defined poverty corresponding with numerous provisions of the ICESCR as: “the lack of basic capabilities to live in dignity”, this definition recognizes poverty’s broader features, such as hunger, poor education, discrimination, vulnerability and social exclusion, para 7.

²¹⁹ OHCHR, “Frequently asked questions on a Human Rights-Based Approach to Development Cooperation”, HR/PUB/06/82006, p.9.

²²⁰ Unifem, “Who Answers to Women? Gender & Accountability. Progress of the World’s Women 2008/2009”, 2009 p. 41. Available at: http://www.unifem.org/progress/2008/media/POWW08_Report_Full_Text.pdf, 10th December 2010.

²²¹ Eigen. Peter, “Civil Society’s role in Promoting Governance and Transparency”, p. 6.

indented for development, undermining governments' ability to provide basic services such as education, health, water, and obstructing equality and justice.²²²

The Transparency International's 2009 Global Corruption Barometer indicated that corruption affects respondents with lower incomes more than other income groups. The Barometer examined the cost of petty bribery for people around the world over one year. They asked respondents who had actually paid a bribe to estimate what percentage of their income this outlay represented. A conservative estimate suggests that people spend about seven percent of their annual income on bribes.²²³ In Mexico it has been estimated that poor families spend almost one-fifth of their income on petty bribes. In India surveys have reported that together, poor people pay more than US \$200 million in bribes annually to access free services, such as police, hospitals, and education institutions. This is a large part of disposable income by any standard, and for poor people, it is likely to undermine their ability to address basic everyday needs.²²⁴

Corruption has caused long term human suffering which will go on to future generations in form of disorders and poverty, since those affected are unable to protect themselves and provide for their families. Human right violations, that are often resulting of corrupt activity are both causes and consequences of poverty,²²⁵ when human rights are not protected it leaves a gap open for corruption to violate this vulnerable groups and individuals. As said before there is no mention of vulnerable and disadvantaged groups of people in the UNCAC. Despite that their economic, social, cultural, political, and civilian rights being constantly violated by corrupt activities. Due to their vulnerability and lack of voice, it is essential to safeguard these disadvantage groups further by integrating human rights approaches into the anti-corruption agenda as it would put focus on rights of vulnerable and disadvantage groups and poverty reduction. As human rights standards require the process of formulating a poverty reduction, including health, education, gender equality, freedom from violence, the ability to live life with respect, and dignity.²²⁶

²²² Kiai, "How Human Rights Principles & Approaches can Help in Fighting Corruption", p. 2.

²²³ TI, "The 2009 Global Corruption Barometer", 2009, p.14. Available at: http://www.transparency.org/news_room/in_focus/2009/gcb2009, 12th December 2010.

²²⁴ TI, "The Anti-Corruption Catalyst: Realising the MDGs by 2015", 2010, p. 4.

²²⁵ OHCHR, "Frequently asked questions on a Human Rights-Based Approach to Development Cooperation", HR/PUB/06/82006, p.9.

²²⁶ WHO, "Human Rights, Health and Poverty Reduction Strategies", *Health and Human Rights Publications Series*, Issue No. 5 2005, p. 12. Available at: <http://www.who.int/hhr/news/HRHPRS.pdf>, 12th December 2010.

4.3 The Impact of Corruption on Delivery of Service

It is important to analyse the impact of corruption on economic, social, and cultural rights. Corrupt acts often violate the enjoyment of these rights whereas States are responsible for delivering a variety of services to their citizens, under human rights law. States have wide range of obligations to provide or regulate public services in relation to health, education, housing, food, and more. The provision of these services to be delivered is essential to the protection of citizen's human rights. Around these services are large public contracts, which can create room for corruption that leads to disproportionate impact on vulnerable and disadvantaged groups, as funds are diverted from meeting their basic needs.²²⁷

One clear symptom of weak government accountability to deliver services is when funds allocated to social programmes get lost to corruption activity, such as embezzlement, ending up affecting wide range of human rights.²²⁸ When substantial public investments are diverted from services, everyone loses but particularly the poor, women, and children. Corruption has therefore direct effect on the access of the poor to key services. The poor rely much more on government services than high income groups, as they have fewer resources of their own and are therefore susceptible to be disproportionately affected when these services are unavailable because of corruption or are available for surcharge they cannot afford. As e.g. corruption acts as a regressive tax on poor families, who are consistently demanded for more bribes when it comes to using State services.²²⁹

4.3.1 When Corruption Violates the Right to Health and Education

Widespread corruption in the education and health sectors deters the poor from seeking healthcare and education, and further depresses living standards and opportunities for poor people in particular.²³⁰ Countries with high levels of corruption invest less in public services, leaving the health and education sector underfunded.²³¹ Research across 50 countries shows there is a clear, positive correlation between increased corruption and the reduced quantity and quality of education in a

²²⁷ ICHRP, "Corruption and Human Rights", p. 45.

²²⁸ *Ibid*, p. 58.

²²⁹ TI, "Global Corruption Barometer 2009", p. 11.

²³⁰ ICHRP, "Corruption and Human Rights", p. 45.

²³¹ TI, "Corruption in the Education Sector", Working Paper 04/2009, p.4. Available at: http://www.transparency.org/publications/publications/working_papers/wp_04_2007_corruption_in_education, 10th December 2010.

country.²³² The same thing has also been found regarding damaging effects on health care provision. This reflects the reality faced by countless number of people that are deprived of their right to health care and education when bribery becomes the collateral for accessing basic services or other form of corruption that deprives civilians from their rights. The cost of corruption in these sectors as in other sectors can be explicit, implicit, and hidden. In the education sector cost of corruption is usually revealed in its long term effects, as in student drop-out rates, lower literacy levels, and limited jobs. But on the other hand in the health care sector effects of corruption often show immediate detrimental effects in death rates.²³³

4.3.1.1 Corruption in the Health Sector

Corruption in the health care sector affects the quality of medicines and the delivery of services, as it affects the availability of government funding to the sector. This can lead to discrimination and inequality to receive medicines and treatments. As, when patients are requested for bribes to get treatments or medicines, their access to health services are severely restricted in favour of those patients able to pay bribes.²³⁴ In many countries bribery is common in the health care sector. A survey done in Poland revealed that the health sector was the second most corrupted sector and medical doctors on the top of the list over corrupt professional group, having 61 percent of patients admitting offering bribes to doctors.²³⁵ Survey of India, Bangladesh, Nepal, Pakistan, and Sri Lanka found that health care workers often demanded bribes for admission to hospital, to provide a bed, or to give subsidized.²³⁶ Other vital effects of corruption, is when corruption inside the pharmaceutical industry compromises well designed national health care programmes. For example, when newly elected parliamentarians campaigns are soliciting money by pharmaceutical companies to pass policies that increase the local cost of needed drugs. That leaves poor sick people out of treatment, which may lead to lost days of work and wages,

²³² Huang, Francis L., "Corruption and Educational Outcomes: Two Steps Forward, One Step Back", *International Journal of Education Policy and Leadership*, Vol. 3, No 9, 2008, p. 6.

²³³ TI, "The Anti-Corruption Catalyst: Realising the MDG's By 2015", 2010, p. 3.

²³⁴ ICHRP, "Corruption and Human Rights: Making the Connection", p. 33.

²³⁵ OHCHR, "Good Governance Practices for the Protection of Human Rights", HR/PUB/07/042007, p. 68. Available at: <http://www.ohchr.org/Documents/Publications/GoodGovernance.pdf>, 11th December 2010.

²³⁶ UNDP, Regional Centre in Colombo, "Tackling Corruption, Transforming Lives: Accelerating Human Development in Asia and the Pacific", 2008, p.59. Available at: http://hdr.undp.org/en/reports/regionalreports/asiathepacific/rhdr_full%20report_tackling_corruption_tr ansforming_lives.pdf, 10th December 2010.

and cycle of poverty. In worst cases that may lead them to buy medicine on the black market. In China for example the broad prevalence of fake medicines is estimated to result in 200,000 to 300,000 deaths annually.²³⁷ But it is unknown how many deaths are due to corruption as it is difficult to link this activity directly to corruption.

In the case of embezzlement, part of public health care fund can get lost due to corrupt officials. Large amount of the budget can disappear before it even gets to hospitals and what is left of it may disappear to directors and managers of the hospital.²³⁸ That is an all too common story in many developing countries. In Liberia for example, audits by the country's General Audit Commission reported severe irregularities committed by employees of the Ministry of Health and Social Welfare. Investigators discovered that almost US \$4 million disappeared in unaccounted funds or about 20 percent of the total ministry budget.²³⁹

The prevalence of corruption in the health sector results in practices that violate the right of every person to the enjoyment of the highest attainable standard of physical and mental health according to Article 12 of the ICESCR and further discriminates the poor and vulnerable who do not have resources to pay bribes.

4.3.1.2 Corruption in the Education Sector

Most parents wish their child a good education which is the key to the next generation's future, particularly for the poor as it can lead to a way out of poverty. Yet the educational systems in many of the poorest countries are harmfully affected by corruption.²⁴⁰ Several different corrupt practices in the education sector harm the quality and availability of education.²⁴¹ But it is mainly three corrupt practices that is most in concern, i.e. embezzlement of resources, abusive demands for fees that by law have abolished, and abuse of power by officials or teachers.²⁴²

Embezzlement of education funds may remove resources that are needed to equip schools and pay teachers.²⁴³ For example, funds may never reach education institutions, in Ghana and Uganda it is common to find payments for each term

²³⁷ TI, "The Anti-Corruption Catalyst: Realising the MDG's By 2015", p. 1-3.

²³⁸ ICHRP, "Corruption and Human Rights", p. 58.

²³⁹ TI, "The Anti-Corruption Catalyst: Realising the MDG's By 2015", p.3.

²⁴⁰ TI, "Corruption in the Education Sector", p. 1.

²⁴¹ ICHRP, "Corruption and Human Rights", p. 59.

²⁴² TI, "Africa Education Watch, Good Governance Lessons for Primary Education", 2010, p. V. Available at: http://www.transparency.org/news_room/in_focus/2010/african_education_watch, 10th December 2010.

²⁴³ ICHRP, "Corruption and Human Rights", p. 59.

delayed, even up to a year. Instead finances might be embezzled by officials, lost in administrative inefficiencies or misused in rigged tenders.²⁴⁴ Survey done to find out what can be done regarding corruption in the education system, found out that 49 percent of non-wage spending on primary education is lost in Ghana and 87 percent in Uganda.²⁴⁵ The funds that do reach schools may not be used according to their intended purpose. Finding from Niger suggests that 100 percent of primary schools lack any accounting system and do not have financial documents available.²⁴⁶ That can lead to educational equipments being sold instead of being freely distributed, the quantity of goods purchased may be inflated or illegal payments may be made by school authorities. Budget shortfalls sometimes force schools to seek additional funds, despite registration fees should have been abolished for primary education. Parents are often exploited when they do not know which demands for school fees are legal and they do not understand their legal rights. A survey revealed that 90 percent of parents in Morocco reported that they had to pay registration fees for primary education even though law requires it to be free.²⁴⁷

Government's failure to pay teachers salaries can often lead to corrupt activities such as teachers bribing their students instead of good characters or admission.²⁴⁸ Corruption in teacher management most often includes bribery. For example private tutoring is a rising industry in many parts of the world. It can become a way for corrupt activity if provided by teachers to their own students.²⁴⁹ Research conducted on corruption in education revealed that 25 percent of households in Uganda and 47 percent in Ghana report paying additional fees for private tutoring. It leaves a window open for teachers to teach only half the syllabus during official hours and bribe students to pay for their private classes to learn the rest or if not threaten students with lower grades if they do not enter their private tutorials.²⁵⁰

When it comes to higher education, academic corruption is often high in countries in Southeast of Europe. Competition among students often leads them to bribe their professors for higher grades or diplomas, for example in Bosnian´

²⁴⁴ TI, „Corruption in the Education Sector, 04/2009“, p. 3.

²⁴⁵ Hallak J. And Poisson M., “United Nations Educational, Scientific Cultural Organization, Corrupt schools, corrupt universities: What can be done?”, 2007, p.125 Available at: <http://unesdoc.unesco.org/images/0015/001502/150259e.pdf>, 20th October 2010.

²⁴⁶ TI, “Africa Education Watch, Good Governance Lessons for Primary Education”, p. 14.

²⁴⁷ Ibid, p.20.

²⁴⁸ ICHRP, “Corruption and Human Rights”, p. 59.

²⁴⁹ TI, “Corruption in the Education Sector“, p.5.

²⁵⁰ Ibid, p.6.

Universities students frequently bribe their professor during exams, for passing the exams. Further, in a survey, almost half of the respondent Bosnian students said that if they were asked to pay bribes, they would not report the offence.²⁵¹ In a corrupt education system, students do not need the knowledge and skills that will enable them to contribute meaningfully to their countries society and economic. They learn to value corruption from young age and get used to it as a social norm.²⁵² The prevalence of corruption in the education sector results in practices that violate the right of every person to the enjoyment of education according to Article 13 of the ICESCR and discriminates against students who are not willing or able to pay bribes.

4.4 How does Corruption affect Gender Equality?

Gender refers to the social quality and opportunities associated with being female or male. Distinct behaviour and roles may give rise to gender inequalities.²⁵³ In this thesis, gender inequalities are the imbalance between, and valuations of men and women in terms of economic, social, cultural, and political roles and power.²⁵⁴

There is a need to give women particular attention, as they are often victims of multiple and interconnected forms of inequality and discrimination and therefore suffer disadvantages in many areas of life. Women's civil rights are often not protected and grossly inequitable when it comes to key social, cultural, economic, and political issues, such as human trafficking, allegations of adultery and rape, inheritance property rights, and financial independence, among other things.²⁵⁵ Social patterns greatly affect the equal opportunities of women and men to seek, share, and receive information about their economic, social, cultural and political rights, to participate in decision-making processes and register complaint that can

²⁵¹ TI, "Stealing the Future: Corruption in the Classroom", 2005, p. 26-27. Available at: <http://www.transparencia.org.es/Stealing%20the%20Future%20-%20Corruption%20in%20the%20Classroom.pdf>

²⁵² TI, "Corruption in the Education Sector", p.6.

²⁵³ WHO, "Gender". Available at: <http://www.who.int/topics/gender/en/>, 13th December 2010.

²⁵⁴ It is a condition which is the opposed of equality, which is defined by the International Labour Organization as women and men having "equal conditions for realising their full human rights and for contributing to, and benefiting from, economic, social, cultural and political development" See, <http://www.ge4de.org/WhatisGenderEquality/Introduction.aspx>, 10th December 2010. See further, TI, "Corruption and Gender in Service Delivery", p. 8.

²⁵⁵ TI, "Gender and Corruption: Understanding and Undoing the Linkages", Working paper 03/2007, p. 3. Available at: http://www.transparency.org/publications/publications/working_papers/wp_03_2007_gender_and_corruption, October 25th 2010.

result in local authorities being held accountable.²⁵⁶ Gender stereotypes frequently attribute to women the responsibility of care giving, particularly for children and older people. While such activities contribute significantly to the household and community development and well being, women often go unrecognized by States and societies.²⁵⁷

It is increasingly recognised that gender inequality can magnify the impacts of corruption, particularly when it comes to service delivery. Women and girls bear globally a disproportionate burden of poverty,²⁵⁸ which makes them considerably more exposed to corrupt abuses. What holds for the poor, holds for many women too but moreover there are also gender specific ways in which services fail women, particularly poor women.²⁵⁹ They may face gendered forms of corruption such as the demand for sex in return for particular services or resources. Women are often in less powerful positions to challenge corruption when it occurs. Gender inequalities result in women having less power and fewer resources to seek legal protection or access complaint channels to correct breakdown or failures in service delivery.²⁶⁰

4.4.1 Women as the Primary Users of Public Services

Poor women depend on public social services more than men owing to their reproductive and care giving roles.²⁶¹ Therefore accountability in public services institutions has particular implications for women. Institutions generally have no policies or incentives to address gender inequality despite the fact that public institutions should be accountable for promoting gender equality. Services are often delivered and designed with men rather than women in mind, which results in women being dependent on men and limiting the opportunities that services should create for women.²⁶² In developing countries the effects are often impossible to avoid when basic services are of low quality and gender inequalities are already high. Basic services such as health care and education can then have negative and disproportionate consequences for women and girls.

²⁵⁶ UN General Assembly, *Human rights and extreme poverty, A/65/259* Sixty-fifth session, August 2010, para 63.

²⁵⁷ *Ibid*, para 54.

²⁵⁸ CESCR, *Poverty and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2001/10*, para 5.

²⁵⁹ Unifem, "Who Answers to Women?", p. 51.

²⁶⁰ TI, "Corruption and Gender in Service Delivery", p. 4.

²⁶¹ UN General Assembly, *Human rights and extreme poverty, A/65/259*, para 66.

²⁶² Unifem, "Who Answers to Women?", p. 51.

Whether it is petty or grand corruption, it is harmful to the development of women's potential. Because, in the case of petty corruption, women and girls are pressed to make informal payments for services that are supposed to be free in the society. In the case of grand corruption, patriarchal structures and existing inequalities may be exploited to perpetrate abuses.²⁶³

4.4.1.1 Gender Impact of Corruption in the Education and Health Sectors

Some form of corruption acts in public services, such as health and education, are gender specific to women and girls. As sexual harassment, exploitation, and the use of sex as a form of payment in return for public services are some of the specifically gendered corruption forms.²⁶⁴ There is evidence of these problems in the education systems across West Africa. A survey on this topic in Botswana revealed that of the girls interviewed, 10 percent had consented to have sex with their teacher for fear of reprisals and 67 percent had been subject to sexual harassment. 11 percent of the girls surveyed seriously considered dropping out of school due to harassment, despite Botswana providing 10 years of free education.²⁶⁵ There is also evidence that there are higher drop outs in the education system as sexual extortion contributes to earlier pregnancies. Many girls are not allowed to go to school because of fear of rape, abduction, and sexual exploitation, though it is not in all cases due to corruption.²⁶⁶ Despite this, sexual exploitation has been largely overlooked as a form of bribery and related abuses often go unreported or undetected. There are no direct provisions of sexual exploitation in the UNCAC and other anti-corruption frameworks and such practices are usually not punished.²⁶⁷ If poor woman with a hope for better life is brought into the situation where her teacher asks her for sex in return for characters or admission,²⁶⁸ the seriousness of this abuse would hardly be gained by the criminal offences under the UNCAC. This abuse amounts to a violation of rights

²⁶³ TI, "Corruption and Gender in Service Delivery: The Unequal Impacts", p. 1. p. 2.

²⁶⁴ Ibid, p. 4.

²⁶⁵ U4, "Corruption in the education sector: Common forms of corruption", Study from 2001. Available at: <http://www.u4.no/themes/education/educationcommonforms.cfm>, 1st November 2010.

²⁶⁶ TI, "Corruption and Gender in Service Delivery", p. 4-5.

²⁶⁷ U4, "Gender, Corruption and Education", 2009, p. 5. Available at:

<http://www.u4.no/helpdesk/helpdesk/query.cfm?id=209>, 2nd November 2010.

²⁶⁸ For example, teachers in refugee camps in Liberia, Guinea and Sierra Leone were using their power position and authority to extort sexual favours from refugee girls in exchange for good characters and other school privileges. U4, "Gender, Corruption and Education", from 2002 UNHCR/Save the Children UK report, 2009, p. 5. Available at: <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=209>, 1st November 2010.

to be free from cruel, inhuman, or degrading treatment according to Article 7 of the ICCPR²⁶⁹ and their right to human dignity according to Article 13 of the ICESCR.²⁷⁰

In the health sector, women are in greater need for health services, moreover as their gender roles as mothers they are in need for special care and medical attention during pregnancy and giving birth. Moreover, due to women gender roles as main care givers for children. When bribes are widespread and women are forced to pay bribes to obtain hospitals to deliver a child, to enrol their children to school, or to receive a medicine for their child they are both more exposed to corruption as it disproportionately hurts their budget but also to the effects and the resultant impacts on the quality of the service.²⁷¹ A recent survey on maternal health in Burkina Faso revealed that corruption among medical personnel is one of the main causes of death for thousands of women during pregnancy.²⁷² In Indian maternity hospitals, mothers even had to bribe nurses in order to see their babies. Poor women are turned away from hospitals unable to pay bribes that are allegedly demanded by hospital staff to administer. Findings from 64 countries, suggested that increasing reported bribery is associated with an increasing maternal mortality, regardless of how wealthy a country is or how much it invests in health.²⁷³ Still, the provisions in UNCAC do not directly mention discrimination and the unequal harm done to victims of corruption, and it does certainly not uphold their human dignity as the human right regime does.

4.4.1.2 The Harm Suffered

When procurement of services that are indented for poor, marginalised women, and girls are for example skimmed with corrupt activities,²⁷⁴ whether it is for medical supplies or school books it can have severe affects on these women as they are less

²⁶⁹ ICCPR, Article 7. The HRC has stated that the aim of this article is to protect the dignity and the physical and mental integrity of the individual. See, General Comment No. 20, Concerning prohibition of torture and cruel treatment of punishment, forty-fourth session 03/10/1992, para 2. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument)

²⁷⁰ ICESCR, Article 13 states that “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”.

²⁷¹ TI, “Corruption and Gender in Service Delivery”, p. 5.

²⁷² TI, “The Anti-corruption Catalyst: Realising the MDGs by 2015”, p. 3.

²⁷³ UNDP, “Tackling Corruption, Transforming Lives”, p.59.

²⁷⁴ For example in Bangladesh one donor initiative that aims to send girls from poor families to school has been ineffective due to corruption. According to a study by TI, 25 percent of families enrolling in the programme have reported paying a bribe. When the family went to collect the money, half the respondents said that part of it was missing due to corruption. See: Transparency International Bangladesh, TI, “The Anti-Corruption Catalyst: Realising the MDGs By 2015”, See further TI “National Household Survey 2007 on Corruption in Bangladesh”. Dhaka 2008. Available at: <http://www.ti-bangladesh.org/research/HHSurvey07SubstSum180608.pdf>

likely to demand accountability, less aware of their rights, and less able to be part of the corruption network implicated in the schemes. In patriarchal societies and political environments they have fewer opportunities to inform policy makers of their situation. This situation can result in health and educational systems to be less able to respond to the types of services that women and girls need.²⁷⁵ Literacy can lower gender gaps, but since corruption in the education system has more influence on women it increases the already existing gap. For example, women that are illiterate are poorer, less active in community activities, less knowledgeable about several political and health related issues, and less likely to send their children to school.²⁷⁶ As report from the UNESCO described, “Compromising the education of girls and women will only lead to more vulnerability and reinforce the vicious cycle of poverty”.²⁷⁷

When corruption prevents woman from getting proper health care or when it prevents a girls from going to schools, the result is not only a lost education or better health, but lost opportunities for their well being, the workforce, and the country’s development.²⁷⁸ The women’s status does not only affect the health, schooling, and nutrition of their children but also influences the country’s long term prospect for economic growth as their status can lower gross national product (GNP).²⁷⁹ Whereas, societies with greater female health and education have higher growth rates and incomes per capita as well as better maternal health, lower infant mortality, and greater levels of nutrition’s.²⁸⁰

Due to corruption broader human rights of vulnerable, poor as well as women and girls, suffer from violations, which seem to be insufficiently protected under the corrupt law enforcement system. Therefore it is essential to reform the anti-corruption framework to take step in eliminating unequal gender gaps and recognize human rights and human dignity.

²⁷⁵ TI, “Corruption and Gender in Service Delivery”, p. 5.

²⁷⁶ Grown. C., Gupto, G., and Kes, A. “Gender Equality. Taking action: Achieving gender equality and empower women”, 2005, p. 41-44. Available at: <http://www.unmillenniumproject.org/documents/Gender-complete.pdf>, 11th December 2010.

²⁷⁷ UNESCO, Bokova, Irina, “Global Education Digest 2010”, p. 4. Available at: http://www.uis.unesco.org/template/pdf/ged/2010/GED_2010_EN.pdf, 11th December 2010.

²⁷⁸ AusAid, “Gender Equality in Australia’s Aid Program – Why and How?”, Canberra, Australia 2007. p.6. Available at: http://www.ausaid.gov.au/publications/pdf/gender_policy.pdf, 12th December 2010.

²⁷⁹ UNDP, “Gender Equality. Taking action: achieving gender equality and empower women”, p. 47.

²⁸⁰ AusAid, “Gender Equality in Australia’s Aid Program – Why and How?”, p. 6-8

4.5 Identifying the Human Rights Approach

The severe, negative effects corruption has on poor civilian's right to health and education breaches their economic, social, and cultural rights. Corruption can also have explicit and implicit bias negative effects on these rights for women. The human rights international framework provides provisions to enforce these rights which might lead to progress in the fight against corruption, if they were available under the corrupt law enforcement system.

These rights have to be examined to determine their effectiveness and how they could prevent corruption and protect the human rights of victims of corruption.

4.5.1 The Right to Health

The right to health is guaranteed in several human rights treaties, such as, Article 11(1)(f) and Article 12 of the CEDAW, but most notably in Article 12 in the ICESCR which establishes the "right to the highest attainable standard of physical and mental health"²⁸¹ CESCR,²⁸² has in its General Comments extensively elaborated on what the right to health encompasses and State Parties obligation under the article. It highlights that the right to health does not mean the right to be healthy,²⁸³ but rather that it takes into account the individuals socioeconomic and biological precondition, and the State's available resources. It further emphasises that the right to health must be understood as a right to the enjoyment of variety of facilities, services, goods, and conditions in order to achieve the highest attainable standard of health.²⁸⁴ States are also obliged to provide timely and appropriate health care, but also underlying determinants of health, such as access to save water and adequate sanitation, safe food, nutrition and housing, healthy occupational and environmental conditions and access to health related education.²⁸⁵ The right to health at all levels and in all its forms has to contain the following interrelated and essential elements.

States are required to have functioning public health and health care facilities, goods, and services.²⁸⁶ These elements have to be availability, accessibility, acceptability and within certain quality. That means that health facilities, services,

²⁸¹ ICESCR Article. 12.

²⁸² CESCR, General Comment No 14. *The right to the highest attainable standard of health*, E/C.12/2000/4 2000.

²⁸³ Ibid. Para 8.

²⁸⁴ Ibid. Para 9.

²⁸⁵ Ibid. Para 11.

²⁸⁶ Ibid. Para 12(a).

and goods must be available to all persons without discrimination. Accessibility encompasses physical accessibility whereby all health services must be within safe physical reach for all sections of populations, economic accessibility i.e. that all health services are affordable to all and information accessibility which refers to the right to seek, receive and impart ideas and information's concerning health issues.²⁸⁷ Acceptability refers to States obligations to ensure that all health facilities, services, and goods are respectful of medical ethics and are culturally appropriate.²⁸⁸ Lastly, States have to guarantee that services and goods are medically appropriate and of good quality.²⁸⁹

One of the core component of the right to health is under Article 12(2)(a), which State Parties must guarantee under all circumstances regardless of available resources, is access to maternal and child health care.²⁹⁰ Reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning as well as the right of access to appropriate health care services that will, for example, enable women to go safely through pregnancy and childbirth.²⁹¹ Moreover, Article 10(2) of the ICESCR stipulates that, mothers should be accorded special protection during a reasonable period before and after childbirth and that special measure of protection and assistance should be taken for children without discrimination.²⁹²

The Committee recommends that States integrate a gender perspective in their health care planning, policies, programmes, and researches. A gender based approach would have to recognize that biological and socio-cultural factors play a significant role in influencing the health of women and men.²⁹³ Further that there is a need to develop and implement comprehensive national strategies to eliminate discrimination against women and to promote women right to health at all times.²⁹⁴

According to the discussion of corruption in the health sector, it can be established that corruption affects the right to health in various direct and indirect

²⁸⁷ Ibid. Para 12(b).

²⁸⁸ Ibid. Para 12(c).

²⁸⁹ Ibid. Para 12(d).

²⁹⁰ Ibid. Para 14.

²⁹¹ Ibid. Note 12.

²⁹² CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 2009, para 4.

²⁹³ CESCR, *The right to the highest attainable standard of health*, E/C.12/2000/4, para 20.

²⁹⁴ Ibid, para 21.

ways, as the right to health, life, dignity, and to be free from discrimination. The CERCS recommendations would be useful if human rights were integrated to the anti-corruption agenda, as it would provide comprehensive basis to evaluate gender perspectives in anti-corruption efforts.

4.5.2 The Right to Education

The right to education is included in several international instruments, notable in Article 13 and 14 of the ICESCR, Article 28 of the CRC and Article 10 of the CEDAW. It has been classified as an economic, social, and cultural right, but it is also in many ways, a civil and political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.²⁹⁵ CESCR has in its General Comment,²⁹⁶ comprehensively elaborated on what the right to education encompasses and State Parties obligation under the article 13 of the ICESCR. In general terms the right has two objectives,²⁹⁷ first the social which affirms the right to receive an education that reflects the aims and objectives identified in article 13(1).²⁹⁸ States are required to make various levels of education available, i.e. primary, secondary, and higher education.²⁹⁹ Second the freedom of education, which requires academic freedom and institution autonomy and implies the personal freedom of individuals or their parents and guardians to choose educational institutions that reflect their educational, moral, and religious convictions.³⁰⁰

Education in all its forms and at all levels shall display the following interrelated and essential features, they should be available, accessible, acceptable, and in good quality according to Article 13(2). States are required to have functioning educational institutions and programmes that are available in sufficient quantity. That relies on numerous factors, for example buildings, sanitation facilities for both sexes, safe water, teaching materials and trained, and paid teachers.³⁰¹ Accessibility implies that education should be accessible to everyone, especially to the most vulnerable

²⁹⁵ CESCR, General Comment 11, *Plans of action for primary education*, E/C.12/1999/4, para 2.

²⁹⁶ CESCR, General Comment 13, *The right to education*, E/C.12/1999/10.

²⁹⁷ ICHRP "Corruption and Human Rights" p. 55.

²⁹⁸ CESCR, *The right to education*, E/C.12/1999/10, para 4.

²⁹⁹ *Ibid*, para 8-14.

³⁰⁰ *Ibid*, para 28.

³⁰¹ *Ibid* Para 6(a)

groups. It should be without discrimination on any prohibited grounds.³⁰² Education has to be within safe physical reach and primary education should be free to all.³⁰³ Acceptability requires that the substance of education is relevant, culturally appropriate, and of good quality.³⁰⁴ Adaptability implies that education has to be flexible so it can adapt to the needs as societies and communities changes and respond to the needs of students within their diverse social and cultural settings.³⁰⁵ In relation to Article 13(2) a State must protect the accessibility of education by ensuring that third parties do not stop girls from going to school and provide the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.³⁰⁶ Article 14 emphasises the States obligation to provide free primary education for all.³⁰⁷ The rights are expressly formulated to ensure the availability of primary education without charge to the child, parents, or guardians.³⁰⁸ It is compulsory which serves to highlight the fact that neither parents, guardians, nor State are entitled to treat the decision whether child should have access to primary education as optional. This requirement underlines the prohibition of gender discrimination in access to education as is required in Articles 2 and 3 of the Covenant.³⁰⁹

From this discussion and the above of corruption in the education sector, the link between corruption and the violations of the right to education can be established. Corruption directly and indirectly infringes these human rights.

By integrated human rights to the anti-corruption framework might pressure governments to make sure that funds allocated to the education sector end up in accountable and transparent manner and to pay teachers commensurate salaries and by doing so turn them from bribery. Further these obligations give special attention to vulnerable groups, women, and children and establish how they must be protected from social discrimination by ensuring their accessibility to education, which is missing from the current anti-corruption measures. It might empower victims of sexual exploitation to exercise their rights and report abuse as they would have

³⁰² Ibid. Para 31-37.

³⁰³ Ibid. Para 6(b).

³⁰⁴ Ibid. Para 6(c).

³⁰⁵ Ibid. Para 6(d).

³⁰⁶ Ibid,para 50.

³⁰⁷ ICESCR, Article 14.

³⁰⁸ CESCR, *Plans of action for primary education*, 12/1999/4, para 7.

³⁰⁹ Ibid, para 6.

possible remedy under the anti-corruption law, where it might fall under a violation of the right to be free from cruel, inhuman, or degrading treatment and violation to human dignity. Moreover, corrupt practices would then more likely be punished.

4.6 The Right to equality before Law without discrimination

The right to equality before law is important to fight corruption. Hence, Judges have to be independent as they have crucial role to curb corruption.³¹⁰ Any efforts to use criminal law to fight corruption would not be effective if a Judge is not independent its work or even far worse if the Judiciary is corrupt.³¹¹ This chapter will discuss the importance of the right to fair trial and effective remedy and how the anti-corruption framework could benefits from the human rights regime.

4.6.1 Corruption and the Right to a fair Trial

The UNCAC tackles corruption in the judicial sector under Article 11, as it provides that each State Party shall take measures to strengthen integrity and prevent opportunities for corruption among members of the judiciary. It further requires States to adopt legislative and other measures to establish criminal offences when justice is obstructed intentionally under Article 25.³¹² But the focus of the legislation seems to be more on the economic side than to alleviate the suffering and help poor and disadvantaged to enforce their rights.

Corruption often impacts the enjoyment of the right fair trial and effective remedy, whereas judges in numerous countries are corrupted and perceived to be open for bribery.³¹³ Under those circumstances the right to fair trial comes with a hefty price tag, which discriminates the poor access to justice as they are not able to pay bribes and for those not willing to pay bribe.³¹⁴ In several European countries corruption is affecting the justice system.³¹⁵ For example in Moldova, widespread

³¹⁰ UNCAC, Article 11.

³¹¹ Kutuuwa, "How to Combat Corruption while Respecting Human Rights", p. 14.

³¹² UNCAC, Article 25.

³¹³ TI, "Global Corruption Barometer Report 2006" 2006. Available at: http://www.transparency.org/news_room/in_focus/2007/gcr_2007#barometer

³¹⁴ Alhassan Alolo, "Corruption, Human Rights and Gender: An Empirical Investigation Ghana" 2007, p. 1. Available at: http://www.ichrp.org/files/papers/134/131_Namawu_Alolo_2008.pdf, 10th December 2010.

³¹⁵ HRC, "Council of Europe Justice Minister Conference: Modernising Justice in the Third Millennium", Istanbul 2010, p. 2. Available at: http://www.coe.int/t/dghl/standardsetting/minjust/mju30/Hammarberg_en.pdf, 9th December 2010.

corruption is a plague in the judiciary system.³¹⁶ In the case of *Flux (No.2) v. Moldova*,³¹⁷ the applicant alleged a breach of its right to freedom of expression, whereas it was found guilty of defamation of a politician, due to an article published in the media.³¹⁸ The majority of the Court declared alleged lack of independence and impartiality of the domestic court Judge.³¹⁹ In the appendix of the case there were several reports revealed, provided by the applicant, one report from the U.S. Department of States country underlined that “officials pressure and corruption of Judges remained a problem...observers frequently charged that other courts were corrupt or politically influenced”.³²⁰ This effectively controverts Article 14 of the ICCPR, which provides for all persons to be equal before the courts and tribunals. As the Council of Europe Commissioner for Human Rights has stated that “there is widespread belief that the judiciary is corrupt and that the courts tend to favour people with money and contacts”.³²¹

In many developing countries and/or patriarchal societies corrupt judiciaries can reinforce the existing gender discrimination as women’s civil rights are often inequitable with regard to property, adultery and rape, marriage and divorce, and child custody.³²² Because they are often deprived from access to redress, as in some countries they have restricted access to channels of recourse due to their gender roles, cultural attitude or because they generally cannot afford justice,³²³ and “he” who can pay will win any case brought to remedy such discrimination by corrupting the prosecutors and/or judges”.³²⁴ For example in Cambodia survey revealed that it is rare for women abused of rape to look for their remedy. As, prosecution against rapist hardly exist due to poor law enforcement and widespread corruption in the judiciary that often results in law enforcement official stipulating that victims withdraw

³¹⁶ American Bar Association, “Judicial Reform Index for Moldova”, 2009, p. 2. Available at: http://www.abanet.org/rol/publications/moldova_jri_06_2009.pdf, 9th December 2010.

³¹⁷ Judgement of the ECHR in case of *Flux (No.2) v. Moldova*, 3rd October 2007. Available at: www.echr.coe.int, 9th December 2010.

³¹⁸ Ibid, para 4.

³¹⁹ Ibid, Court para 1.

³²⁰ Ibid, Appendix para 3. See further para 1. Chairman of the Association of Judges in Moldova declared publicly in media that the “senior government officials were pressurising judges to issue rulings that favoured government bodies”.

³²¹ CoE, “Judicial corruption”, Parliamentary Assembly 2009. Available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12058.htm>, 9th December 2010.

³²² Alhassan Aलो, “Corruption, Human Rights and Gender: An Empirical Investigation Ghana”, p. 1.

³²³ U4, “Gender, Corruption and Education”, p. 3.

³²⁴ U4, “Protection and advancement of women’s rights”. Available at: <http://www.u4.no/helpdesk/helpdesk/queries/query98.cfm>

their criminal complaint.³²⁵ In these cases corruption does not allow for the development of equality before the law.

Corruption weakens the accountability of fair justice and allows offences to go unpunished. The UNCAC provides for corruption to be punishable offence which should be established in a society irrespective of the level at which the act of corruption takes place. But the fact is that corruption interferes with the progress of civilians to release their rights and by doing so violates their human rights. This gives a strong reason to evaluate the effectiveness of integrating human rights to the anti-corruption framework,³²⁶ as Article 26 of the ICCPR provides for;

all persons are equal before the law and are entitled without any discrimination to the equal protection of the law... the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground

The enforcement of the rule of law in the judicial process has to be equal, non-discriminating and transparent, without deviation from the judicial process. Both the human rights framework and the anti-corruption framework increase the legitimacy of the State and ensure accountability of the administration, but the human rights framework would be very useful in regard to protect the rule of law and the right to equality and non-discrimination.

4.6.2 Corruption and the Principle of Non-Discrimination and Equality

The nature of corruption is such that it tends to benefit only few who afford participating in corrupt activities and discriminates against those who are less able to defend their interests and rights. Corruption is therefore opposing to the equality to the law, as it does not allow the principle of equal treatment to be fulfilled.³²⁷ As said before, the UNCAC does not directly mention non-discrimination; it is implicit with

³²⁵ Amnesty International "The State of The World's Human Rights" 2010, p. 94. Available at: [http://www.reliefweb.int/rw/lib.nsf/db900sid/KHII-85U3FK/\\$file/amnesty-annual2010.pdf?openement](http://www.reliefweb.int/rw/lib.nsf/db900sid/KHII-85U3FK/$file/amnesty-annual2010.pdf?openement), 8th December 2010.

³²⁶ Kumar, "Corruption as a Human Rights issue in South Asia; law, development and governance", School of Law, City University of Hong Kong 2006, p. 14. Available at: <http://www.law.monash.edu.au/castancentre/events/2006/conf-06-kumar-paper.html>, 5th December 2010.

³²⁷ Kumar, C. Raj., "Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India", p. 57-58.

various references to the rule of law and participation.³²⁸ Equality under the law is internationally accepted standard which means that the law should apply equally to both the powerful and the weak, men and women.³²⁹ Hence, there is a need to further protect vulnerable people under the anti-corruption framework.

The principles of non-discrimination and equality are present in all the major human rights treaties, most notably the provision is set out in Article 2(2) under the ICESCR and Article 2(1) under the ICCPR. The UN Human Rights Committee has defined discrimination as,

*any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*³³⁰

Non-discrimination and equality are fundamental principles in international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.³³¹ Article 2(2) of the ICESCR obliges each State Party to “guarantee” the relevant rights in the Covenant “will be exercised without discrimination”.³³²

Non-discrimination, equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, Article 2(1), of the ICCPR obligates each State Party to respect and ensure all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind.³³³

Provisions for the equality of the sexes in the enjoyment of rights are provided for both, in Article 3 of both ICESCR and ICCPR. They obligate each State Party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenants.³³⁴ The principles of non-discrimination and equality provide the

³²⁸ UNDP, “The Impact of Corruption on the Human Rights Based Approach to Development”, p. 28.

³²⁹ Kiai, How Human Rights Principles & Approaches can Help in Fighting Corruption”, p. 4.

³³⁰ OHCHR, General Comment No. 18, *Non-discrimination*, 11/10/198, para 7.

³³¹ CESCR, *Non-Discrimination in Economic, Social and Cultural Rights* (art. 2, para. 2), E/C.12/GC/20, para 2.

³³² ICESCR, Article 2(2)., Additionally to the Article, States are obliged to remove gender and other stereotyping that hinders access of girls and women to education, and other vulnerable groups, see CESCR, *The right to education*, E/C.12/1999/10, para 55.

³³³ OHCHR, *Non-discrimination*, 11/10/198, para 1.

³³⁴ ICCPR, Article 3 and ICESCR Article 3.

central theme of CEDAW³³⁵ and starts by defining the term discrimination against women in Article 1.³³⁶ Further, Article 2 sets out the responsibility of States to refrain from discrimination against women and taking “all appropriate” measures to eliminate discrimination. Among the International human rights treaties the Convention takes an important place in bringing the female half of humanity into the focus of human rights concern.³³⁷ In its preamble, to the Convention recalls:

*that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,*³³⁸

Corruption interferes with the above mentioned rights and the exercise of corrupt activities is a clear violation of this obligations. Corruption is for example an obstacle to the State obligation to guarantee the ICESCR rights without discrimination, according to Article 2(2), States are therefore obliged to make efforts against it. As a result, corrupt practices commonly produce unequal and discriminatory outcomes with regard to human rights. A governance system that is free from corruption does not discriminate against people as well as ensuring that the State’s services is distributed fairly and that the governmental decision-making are based on fair, just and reasonable factors.³³⁹

By indentifying victims of corrupt acts and establish the harm suffered by the victim reflects the failures of the State and the discriminating and unequal effects it has on civilians.

³³⁵ Convention on the Elimination of All Forms of Discrimination against Women, Adopted by General Assembly 18th Dec. 1979, entered into force 3rd Sept. 1981.

³³⁶ CEDAW, Article 1 provides that “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

³³⁷ CEDAW, “Introduction”. Available at:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>, 10th December 2010.

³³⁸ CEDAW, preamble.

³³⁹ Kumar, “Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India”, p. 57-59.

4.7 Reforms to Fight Corruption while Safeguarding those who Need it the Most

The analysis in this chapter on the impact of corruption on human rights and gender has resulted in the conclusion that corruption undermines the respect for human rights and human dignity, of both men and women, but women are often disproportionately and differently affected. The fact that corruption remains an important problem to tackle, as it continues to interfere with civilians efforts to fulfil their political, social, economic and civil rights, and eat away the precious resources should be enough justification for formulating new strategies to address corruption. Strategies that would protect the vulnerable, poor, women and children, and provide sustainable development. The issue of corruption is very much inter-related with other issues. Hence, by integrating human rights would support the current anti-corruption framework and would be one step forward to fight corruption and protect human rights.

4.7.1 Amendment on the UNCAC and Optional Protocol

As said before, the UNCAC is the only international Convention open for ratification by all States. Therefore instead of formulating new conventions it might be worth considering reforming the UNCAC by integrating human rights into it, for achieving international consensus that corruption violates human rights.

This could be done by amending the UNCAC, which would be binding on those State Parties that express their consent to be bound by it according to Article 69(5) of the Convention. According to Article 69(1), a State Party may propose an amendment after five years from entry into force. Now it is time for changes as there is emerging consensus that corruption violates human rights and the UNCAC is on its fifth year since its entry to force,³⁴⁰ as this thesis has established that there are links between corruption and human rights violations. Further it has explored that there is reinforcing nature of the UNCAC and the human right regime. But the question remains how human rights should be integrated to the UNCAC.

Recommended reforms would first, include amendment on the preventive measures in chapter II. Article 13(c) stipulates that the public should get education on non-tolerance for corruption. However this Article should be amended to include that education should inform the public that corruption violates human rights, for civilians

³⁴⁰ In accordance with Article 68(1) of resolution 58/4, the UNCAC entered into force on 14 December 2005.

to be informed of the detrimental effects of corruption, not only on the economy but on their human rights.

Second, new article that includes measures relating to delivery of services would be desirable, to prevent corruption from being an obstacle for civilians to enjoy their economic, social and civilian rights. This could be done in accordance with Article 9 on public procurement and management of public finances. Proposed article would state that each State Party should, in accordance with the fundamental principles of its legal system, take necessary steps to establish appropriate system of delivery of services, with effective system of domestic review, including effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures of these services are not followed.³⁴¹ Further this could include special review measures and programmes that take gender perspectives into account. Thirdly, to stipulate that corruption violates human rights, optional protocol could be integrated to the UNCAC. The protocol could be established in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing to the United Nations Convention against Transnational Organized Crime.³⁴² Protocol to the UNCAC should prevent, suppress and punish corrupt activities that violate human rights, with special protection for vulnerable, poor, women and other marginalised groups. Where State Parties should take effective action to prevent and combat corruption that violates human rights, by protecting their internationally recognized human rights.³⁴³ Then the ICESCR and ICCPR might be very useful to develop corruption prevention strategies under the protocol, particularly with regard to protection of the rule of law, the right to equality and non-discrimination and to establish better public services.³⁴⁴ The purpose of the protocol should be stated in accordance with Article 2 of the Protocol to prevent Trafficking, i.e. (a) to prevent corruption that violates human rights, by paying particular attention to vulnerable, poor, women and marginalised groups. (b) To protect and assist the victims of corruption, with full respect to their human rights and

³⁴¹ UNCAC, Article 9.

³⁴² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in its resolution 55/25, 15th November 2000. Available at: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

³⁴³ Ibid, preamble.

³⁴⁴ Kumar, "Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India", p. 57.

(c) To promote cooperation among State Parties in order to meet those objectives. Definition of the term, violation of human rights should be according to recognized international human rights. Criminalization should be in accordance to Article 5 of the Protocol, which would establish that each State Party should adopt legislative measures and other measures as may be necessary to establish criminal offences of the conduct of acting corruptly and by doing so violate human rights, including sexual exploitation.

In order for these reforms to become a functional instrument a State Party has to propose these amendments and transmit it to the Secretary-General of the United Nations, according to Article 69(1). Moreover, the Conference of the States Parties has to make every effort to achieve consensus on the amendment. If they do not come down to agreement, the amendment requires for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

The UNCAC monitoring mechanism is still evolving³⁴⁵ and remains with the Conference of State Parties according to Article 63. An effective monitoring mechanism would be essential for the proposed protocol, to strengthen it and improve. It should be established under the protocol, that the Conference of State Parties should work with domestic and international mechanisms that exist to monitor compliance with human rights. This protocol could then be supported with the decade's long experience of the human rights movement and its monitoring mechanisms and jurisprudence.³⁴⁶

Finally, it might also be worth considering integrating corruption to the human rights regime, for example a third optional protocol to the ICCPR which would establish that every human being has the right to be free from corruption, that would further incorporate economic, social and cultural rights. However, as stated before there is a lack of consensus of the scope and definition of corruption, which might make this type of protocol insufficient in practice.

³⁴⁵ UNDP "Supporting UNCAC Implementation", October 2008, p. 22. Available at: <http://asia-pacific.undp.org/practices/governance/documents/UNCACTraining-200810.pdf>, 11th December 2010.

³⁴⁶ Terracino, "Integrating Human Rights and Anti-Corruption Policies: Challenges and Opportunities", p. 1.

4.7.2 Benefits for Civilians

Integrating human rights to the anti-corruption framework would have several benefits for civilians. First, to empower vulnerable and poor in corruption cases, they should have the opportunity to contest their rights through legal framework. Legislation against the conduct of corruption as a violation to human rights would promote the empowerment of victims of corruption as they could look to mandatory enforcement mechanism that would focus on their protection and create opportunities for them to practice the rights that they are entitled to and impose legal obligation on other, such as States.³⁴⁷

Second, human rights would benefit anti-corruption strategies with bottom up approach, by giving voice to the people most affected. Human rights standards and principles could more so, function as preventive measures in anti-corruption strategies as it would support the right to participation and freedom of expression, transparent and accessible information and force accountability.³⁴⁸

Third, human rights discourse would empower civil society,³⁴⁹ as well as vulnerable groups, poor and women. The notion of empowerment is deeply integral to the recognition of human rights. Article 1, under both ICCPR and ICESCR, states that the right to self-determination is universal and puts obligation on States to promote the realization of that right and to respect it.³⁵⁰ Moreover it provides that all people “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.³⁵¹ Political and civil rights empower vulnerable and poor people to demand their economic, social and cultural rights but also accountability for good public services, public policies and a transparent participation process for their voices to be heard.

³⁴⁷ CESCR, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2001/19, para. 14, see further, ICHRP, “Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities”, p.30.

³⁴⁸ Terracino, “ Integrating Human Rights and Anti-Corruption Policies: Challenges and Opportunities”, p. 3.

³⁴⁹ Kumar C. Raj, “Human Rights Approaches of Corruption Control Mechanism-Enhancing the Hong Kong Experience of Corruption Preventing Strategies” *San Diego international Law journal* Vol. 5 2004, p. 349.

³⁵⁰ General Assembly, “Fact sheet No. 2 (Rev.1), The International Bill of Human Rights”, p. 4.

³⁵¹ ICCPR and ICESCR, Article 1.

4.7.3 Gender Sensitive Approach in Anti-Corruption Programmes

States have obligations regarding women under international human rights law. By integrating human rights into the anti-corruption framework with above recommended amendments and protocols with special consideration on women would support gender perspectives in relation to anti-corruption programmes. It would further enable women to realise their economic, social, political, and civilian rights, such as increase their participation in political and public life,³⁵² access education, health, fair justice and resources, strengthening their economic power and to live their life without of fear of discrimination, coercion, and violence.³⁵³ It would help anti-corruption programmes to address gender violations, and the human rights of women and other groups who suffer from discrimination. By integrating human rights in the design and monitoring of anti-corruption programmes would cause anti-corruption organisations and institutions to take into account gender and be more aware of other minority groups and show them more concerns.³⁵⁴

Possible solution would be to recommend that States gender mainstream anti-corruption strategies and programmes, which is a concept that was established at the United Nations Fourth World Conference on Women in 1995.³⁵⁵ That implies analyses on how gaps in gender equality have to be identified i.e. “ensure that gender equality is a primary goal in all area(s) of social and economic development”.³⁵⁶ The United Nations Economic and Social Council defined the gender mainstreaming as follows;

*Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.*³⁵⁷

³⁵² CEDAW, Article 7 and 8.

³⁵³ General Assembly, *Human rights and extreme poverty*, A/65/259, Sixty-fifth session 2010, para 29.

³⁵⁴ ICHRP, “Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities”, p. 55-56.

³⁵⁵ UNIFEM, “Who Answers to Women? Gender & Accountability”, p. 103.

³⁵⁶ International Labour Organization, “Gender Equality Tool”. Available at: <http://www.ilo.org/public/english/bureau/gender/newsite2002/about/defin.htm>

³⁵⁷ ECOSOC, *Coordination of the Policies and Activities of the Specialized Agencies and their Bodies of the UN*, Excerpt form A/52/3. Available at: <http://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>, 9th December 2010.

It is a globally accepted strategy that is not an end in itself but an approach to achieve gender equality³⁵⁸ and would help to have human rights of both women and man respected. Further, for this to succeed States have to take all measures to act on their obligation, to eliminate all legal and factual discrimination against women according to Article 2 of CEDAW.³⁵⁹ It also implies that States Parties to the CEDAW are bound, at a minimum, to take all appropriate measures to modify local traditions that release the full realization of women's rights to equality.³⁶⁰

The main challenge is that the greater participation of women will not automatically engender institutional change in patriarchal society with male bias of governance institutions and the structural barriers to the addressing of gender interests.³⁶¹ The problem often lays in long established societal attitudes on what the roles of women are within patriarchal society. Discrimination against women is institutionalized in many laws, systems, policies and economic, social and cultural rules. These attitudes are often very firmly entrenched and therefore only possible to change with direction from the government and the legal systems.³⁶² To break this cycle it starts by integrating human rights to the corruption frameworks with gender perspective programmes and by doing so target corruption.

4.7.4 Challenges

International anti-corruption conventions do a great deal in forming common standards. But anti-corruption regulation does not solve the corruption problem and protect human rights as such, as the enforcement mechanisms are often inadequate.³⁶³ Human rights approaches and principles might fill in legal gaps of the UNCAC and other anti-corruption instruments, protect vulnerable individuals and groups that are disproportionately affected of corruption and change the anti-corruption initiatives that are genders neutral to take gender sensitive approaches. However, the main challenge is also that far too many people are unaware of their

³⁵⁸ OSAGI, "Gender Mainstreaming". Available at: <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>, 9th December 2010.

³⁵⁹ See also Article 2 of ICCPR and ICESCR.

³⁶⁰ CEDAW, Article 2(f).

³⁶¹ Sever, Charlie, "The Gender, Poverty, Governance Nexus: Key issues and current debates", Bridge 2005, p.4. Available at: http://mowdalumni.com.pk/pdf/Gender_Poverty_Livelihoods/gender-poverty-governance-nexus-2005.pdf, 20th November 2010

³⁶² Stone, Richard, "Civil Liberties & Human Rights", 4th Edition, Oxford University Press 2002, p. 461.

³⁶³ Carr "Fighting Corruption Through Regional and International Conventions" p.34.

rights and among them are often the most vulnerable. While there is increasing number of assistance mechanisms in place for people to report corruption, too many are still outside the reach of professional advice and information that empowers them to confront abuses. In many countries whistleblowers remain threatened by inadequate laws and negative public perceptions.³⁶⁴

Other more far reaching challenges are first of all that pattern of corrupt activity vary significantly across countries and tend to undermine the basis for expecting a kind of “one-size fits” all legal response to be equally effective across the globe.³⁶⁵ Second, compared to the environmental legal movement, there have been long running debates of environmental violations being human rights violations, despite the human rights protection and environmental protection are relatively well-developed the recognition of the linkage between the two has been slow to develop.³⁶⁶

For reforms to be effective in the fight against corruption while safeguarding human rights, all sectors including civil society have to be focused on making improvements and work together so the core ideology benefits all human kind. The reform of integrating human rights to the anti-corruption are much easier if there is a domestic and international consensus that there are benefits from reduction of corruption and protecting human rights and that citizens see the gain as well.³⁶⁷

4.7.5 Good governance

While human rights empower citizens and provide standards which governments and other actors can be held accountable for, they cannot be protected and respected in a sustainable manner without good governance.³⁶⁸ As the Human Rights Council has stated governments have to recognize;

The increasing awareness in the international community of the detrimental impact of widespread corruption on human rights, through

³⁶⁴ IACC, “Changing the Rules of the Game” 14th IACC 2010. Available at: <http://14iacc.org/programme/change-the-rules-of-the-game/>

³⁶⁵ Ackerman, *Corruption and Government: Causes, Consequences and Reform*, p. 197

³⁶⁶ Carnegie Council on Ethics and International Affairs, “Human Rights dialogue, an international forum for debating human rights” Series 2 No. 11. 2004, p. 2. Available at: http://www.carnegiecouncil.org/resources/publications/dialogue/2_11/index.html/res/id=sa_File1/Human_Rights_Dialogue_Environment.pdf, 24th November 2010.

³⁶⁷ Ackerman, *Corruption and Government: Causes, Consequences, and Reform*, p. 222.

³⁶⁸ HRC, Resolution 7/11, The role of Good Governance in the promotion and protection of human rights, 2008, p. 2

*weakening of institutions and the erosion of public trust in government, as well as through the impairment of the ability of Governments to fulfil their human rights obligations, particularly the economic and social rights of the most vulnerable and marginalized.*³⁶⁹

A well governed society ought to ensure that its democratic institutions are free from corruption and work toward the protection and promotion of human rights. A system with good governance is one that encompasses accountability, transparency, participation, and responsibility. If these characteristics are present in a State, decision making by a State will take into consideration the views of the most vulnerable groups in the society. The State will then act in the favour of protecting its citizenry rather than in the interests of the powerful few. Good governance and human rights are mutually reinforcing and share common principles.³⁷⁰

Good governance is also important for gender sensitive approach to be successfully applied to anti-corruption procedures, for women to be equal with men in public and private spheres of life and participate in decision making. It is also important that governments realise that greater participation of women in society has positive effects on development. Researchers have suggested that women's participation in political decision-making bodies improves the quality of governance. The study found a positive correlation between increased women's participation in public institutions and life and a reduction in the level of corruption.³⁷¹ Increasing level of participation and representation of women in State institutions and decision making bodies is a step forward in protecting their political right.

The aim pursuit will only be conceived if governments prioritise to implement anti-corruption legislations and programmes effectively, and further take necessary changes into force and fulfil them with good governance which promotes human rights.

³⁶⁹ Ibid.

³⁷⁰ Matsheza, "Fighting Corruption While Safeguarding Human Rights", p. 2.

³⁷¹ Dollar, D., Fisman, R., and Gatti, R., "Are Women Really the "Fairer" Sex? Corruption and Women in Government", Policy Research Report on Gender and Development, Working Paper Series, No. 4. 1999, p. 8. Available at:

<http://www.sec.lt/pages/alfdiskusijos/pages/discuss3/docs/gender%20and%20corruption.pdf>, 8th December 2010.

5 CONCLUSION

This thesis has aimed on looking at corruption through a human rights lens and to provide an understanding on how human rights and corruption are interrelated subjects that should be discussed in parallel. Linking acts of corruption to human rights through researches and surveys has established that there are direct and indirect links between corruption and human rights violations. However, in many cases it is hard to prove the damage corruption causes as it is a secretive activity. In many countries it has become a social norm to be asked to pay bribes, which civilians do not report, like the research in Bosnian Universities revealed. Other surveys and case studies from Moldova showed that people's right to fair trial and effective remedy are often blocked due to corrupt judiciaries and political pressures. The examples of surveys and researches in the thesis illustrate how people's human rights can be violated due to corruption.

The thesis emphasised on analysing how marginalized women can be disproportionately and often differently affected of corruption, precisely in developing countries and/or patriarchal societies. Based on these analyses women can be more vulnerable than men to corruption, as they form a larger proportion of poor in societies and are primary users of public services due to their reproductive period and responsibility for child care. As a result, when there is corruption in public service delivery it has different and disproportionate impact on women. Moreover, many form of corruption can be gendered; surveys showed that women are often subject to sexual exploitations which are used as a form of compensation in return for public services.

In the thesis it was explored that there is a reinforcing nature of the UNCAC and the human right regime, despite that the UNCAC fails to recognize that respect for human rights will benefit the fight against corruption and moreover that corruption violates human rights. Analyses carried out that there is no mention or attention given to vulnerable, disadvantaged and poor in the UNCAC, despite that they are exposed to particular risk due to corruption. Moreover, there is adequate attention given to gender perspectives in the anti-corruption framework and programmes. International consensus is emerging that corruption violates human rights and that it is no longer just an economic and political issue. Human rights protection must become a fundamental part of the anti-corruption framework not just an indirect result of it.

Hence, there is a need to look forward and fill in the gaps of the anti-corruption framework with human rights approaches to curb corruption.

Proposed reforms on the anti-corruption framework were to integrate human right to the UNCAC as it has worldwide coverage and is the only anti-corruption treaty open to universal membership.

Recommended reforms are first, Article 13(c) of the UNCAC should be amended to include that public education should stipulate that corruption violates human rights. If people become more aware of the severe affects corruption has on human rights and public interests they are more likely to support programmes and campaigns that prevent corruption. Civil society actor and NGO's have important role to play to unfold the detrimental effects of corruption, this amendment would support their work.

Second, new article should be implemented that includes measures relating to delivery of services. This could be done in accordance with Article 9 on public procurement and management of public finances. This article would serve to control corruption in delivery of services and institutionalize that corruption is not tolerated. The article should include special review measures and programmes that take gender perspectives into account. This article would promote protection for civilian's enjoyment of their socio-economic rights.

Thirdly, to stipulate that corruption violates human rights, optional protocol could be integrated to the UNCAC that would be responsive to the human rights of the most vulnerable in society. Protocol to the UNCAC should prevent, suppress and punish corrupt activities that violate human rights, with special protection for vulnerable, poor, women and other marginalized groups. It should further be established under the protocol that monitoring should be supported with domestic and international mechanisms that exist to monitor compliance with human rights. Then the nascent anti-corruption movement would be supported with the decade's long experience of the human rights movement and its monitoring mechanism. This protocol would encourage States to address gender perspectives and to stimulate that anti-corruption programmes should be gender sensitive.

Human rights approach to the anti-corruption framework would empower vulnerable and poor in corruption cases, serve to preserve the victims of corruption to enjoy their human dignity and for those who act corruptly to be sanctioned for human rights violations. Human rights discourse would empower vulnerable groups, poor

and women to socially tackle corruption. NGO's and civil society actors would be in better position to work with citizens to defend their rights and counterbalance the power of the States and multinational companies. As human rights approach integrated to the anti-corruption framework would make people the central players in the corruption resistance movement.³⁷²

However, it is important to notice that integrating human rights approaches to the UNCAC will not solve the harm suffered due to corruption, it is only a step forward on the long road to curb corruption, which might in the long run institutionalise culture of integrity. It is critical to look at the whole circle of the corruption problem and not just on one part to find solutions, safeguard human rights and for reforms to succeed and to realise that the fight against corruption is a challenge not only for governments but for the international community. It has been showed in the past and present that reforms demonstrate the importance of powerful supporters in- and outside of governments as well as all sectors of the society, including civilians.³⁷³ All in all the fight against corruption is a fight for all human rights of all human being.

³⁷² Kumar, " Human Rights Approach of Corruption Control Mechanism-Enchanting the Hong Kong Experience of Corruption Prevention Strategies", p. 350-351

³⁷³ Ackerman, Susan, *Corruption and Government: Causes, Consequences, and Reform*, p. 222.

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